
Comment Letter I001

I001

-----Original Message-----

From: Richard Mlynarik [mailto:Mly@POBox.COM]
Sent: Tuesday, January 27, 2004 2:09 PM
To: webmaster@www.calhighspeedrail.ca.gov
Subject: Please fix inadequate HTML in HSR DEIS web site

1. All of the links in the site appear to be absolute link (eg "/images/...")

This means that it is extremely inconvenient to download the content of the site and browse it off-line or to browse it over anything but the highest speed connections.

The generating software should either be configured or fixed to present relative links (eg "../images/") whenever possible -- which is everywhere. There is no excuse for the absolute links.

2. The resolution of all of the maps is completely unacceptable and inadequate for any sort of evaluation the the wonderful and skilled technical work undertaken by the HSR's consultants. Most of the diagrams in PDF format appear to take NO advantage of the resolution- independent graphical nature of PDF and are merely low-resolution scans with some wrapping about them.

Given that all the figures and diagrams were created in GIS or Illustration programs it should be a simple matter for a competent web publisher to generate maps and figures and diagrams which combine acceptable (> 200dpi) scan quality (for portions of documents which are images, such as relief shading or orthophoto backgrounds) with resolution-independent and hence meaningful vector graphic information generated directly from the GIS/CAD/technical drawing/illustration software.

This again is not difficult, but just requires attention.

If you do actually wish for informed comment on the program, it will be necessary to present meaningful amounts of information on the site, not just fuzzily scanned generalizations.

Thanks.

I001-1

5

Response to Comments of Richard Mlynarik, January 27, 2004 (Letter I001)

I001 -01

The Draft Program EIR/EIS was put on the website in a manner that made the document accessible to the public. The absolute links make it easy to navigate between the many sections of the documents and keep file sizes small so they can be quickly uploaded and reviewed. Based on the comments received, most members of the public appear to be most interested in certain geographic areas or resource topics. The Authority believes that the resolution of the graphics is appropriate for the program-level EIR/EIS, and like the document, were done in a way to maximize public accessibility.



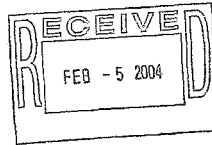
CALIFORNIA HIGH-SPEED RAIL AUTHORITY

U.S. Department
of Transportation
**Federal Railroad
Administration**

Comment Letter I002

I002

From: Geoffrey Kemmerer
748 W. Loma Alta Dr.
Altadena, Ca. 91001
(626)345-0874
rwcek@aol.com



To: California High-Speed Rail Authority
925 L Street Suite 1425
Sacramento, Ca. 95814

To whom it may concern:

I was informed by the Pasadena Star that you are taking feedback about the proposal to install a high speed rail network between San Diego, Los Angeles, and Sacramento. I urge you to look at the advantages of the Japanese maglev technology that is currently in reliability testing. Because the system lifts from the sides of the cars and has trucks (flanged wheels in a rigid carriage) like standard rail systems it could be adapted to use the existing infrastructure within the cities but does not need the high level of track maintenance on the high speed runs that the high speed rail requires. Further advantages of maglev trains are the ability to navigate steeper grades which could eliminate the need for some tunnels and higher speeds which cuts down travel times and makes the system more competitive with air travel.

One note should be made to differentiate between the maglev systems developed by the Germans and Japanese. The German system uses electromagnets, it isn't compatible with existing rail infrastructure and the technology has maxed out. It is impossible to improve it to speeds much greater than the current 300 mph. While the Japanese system uses superconductors and superconductor technology is still in its infancy. Current developments are producing cheaper materials that can maintain much higher magnetic fields than are possible with any other material. This means that the current speeds are the starting point for this technology. NASA is currently looking at using maglev technology to help launch spacecraft by propelling them to speeds of 600 mph or more before the need to use internal fuel.

Despite the fact that the French TGV has set a speed record of 275 mph it normally operates at 150-175 mph. The Japanese have recently set a speed record of 361 mph and plan to operate at 300 mph. There is no reason to believe that the maglev system couldn't be operated reliably at speeds above the 300 mph in the future so when comparing actual operating speeds the maglev system will give much better travel times.

The cost of installing maglev track is about twice that of regular high speed rail but by combining shorter high speed runs at much greater operating speeds with existing infrastructure a system could be installed for about the same amount of money with the same travel times as high speed rail but with much lower maintenance and operating costs and the ability to upgrade in the future.

My last point to consider is that rail travel has been around since the 1830's, I don't think that the inventors envisioned that they were setting a standard that would be in place for hundreds of years but that is what they did. You are talking about playing

catch-up by installing thirty year old technology that has peaked and locking this state into a transportation standard that will exist decades or more. After money is spent on high speed rail system the investors will not want competition and the citizens won't want to spend money to replace a transportation system that was just installed. It is very conceivable that maglev technology will achieve the same speeds as aircraft within the next decade and we should not be handicapped by the lack of infrastructure because nobody considered how the decisions being made today will dictate future developments.

I002-2
cont

Thank You

Geoffrey Kemmerer

I002-1

I002-2

1

2

Response to Comments of Geoffrey Kemmerer, February 5, 2004 (Letter I002)

I002-01

Please see standard response 2.10.3.

I002-02

Please see standard response 2.12.2.

Comment Letter I003

I003

UNDERGROUND EXPRESS

14 COMMERCIAL BLVD. • SUITE 131 • NOVATO, CA 94949 • 415-883-6500 • FAX 415-883-7634

VARIOUS TRANSPORTATION AGENCIES APPEAR TO BE TRYING TO SOLVE A 20TH CENTURY PROBLEM WITH A 19TH CENTURY SOLUTION.

IT IS SENSELESS TO ATTEMPT TO SERVE A DE-CENTRALIZED POPULATION USING A STANDARD RAILROAD. IT SIMPLY WILL NOT WORK!

A SMALL MODULE, (10 OR 12 PASSENGER), CNC HANGING MONORAIL SYSTEM AFFORDS NUMEROUS ADVANTAGES, SEVERAL OF WHICH ARE:

MUCH SMALLER RIGHTS-OF-WAY, MANY OF WHICH ARE ALREADY PUBLICLY OWNED, E.G. FREEWAYS' MID STRIPS.

FAR MORE ATTRACTIVE TARE/GROSS RATIOS.

VASTLY WIDER DENDRITIC DEVELOPMENT POTENTIAL, THEREBY BETTER SERVING DE-CENTRALIZED POPULATIONS.

MUCH LESS ENVIRONMENTALLY INTRUSIVE; ELECTRICALLY OPERATED,---NO SMOKE OR EXHAUST.

F A S T E R !

SOLUTIONS TO THE ENGINEERING PROBLEMS ARE WELL WITHIN OUR CURRENT GRASP.

SOON, WHEN THE MOSCOW-ST. PETERSBURG MONORAIL OPENS, YOU HEARD IT HERE FIRST!


SHELDON MORRIS

I003-1

Response to Comments of Sheldon Morris, February 9, 2004 (Letter I003)

I003-01

Please see standard response 2.12.2 in regards to electrically powered steel-wheel-on-steel-rail HST technology, and standard responses 2.1.1 and 2.1.2 in regards to the Authority's ridership and revenue forecasts.

In order to relieve capacity constraints of the existing transportation system, an HST system must offer competitive travel times with air transportation and the automobile. Technologies with maximum speeds below 200 mph (320 kph) were considered and rejected as indicated in Section 2.6.6 of the Program EIR/EIS. Foreign HST experience, the experience of the northeast corridor (Boston-New York-Washington, D.C.), HST studies done elsewhere in the U.S. and the Authority's feasibility studies have all shown that to compete with air transportation and generate high ridership and revenue, the intercity HSR travel times between major transportation markets must be below 3 hours.

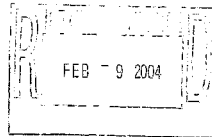
The co-lead agencies are unaware of any "hanging monorail" systems that operate at high-speeds anywhere in the world in revenue service or on a full-scale test track.

In California, the size of aerial structures is largely dictated by seismic load factors. Therefore, the right-of-way requirements of aerial structures for monorails or guideways (Maglev) would be about the same as those for steel-wheel-on-steel-rail systems.

Comment Letter I004**I004**

February 5, 2004

High Speed Rail Authority
925 L Street, Suite 1425
Sacramento, CA 95814



Subject: DEIR Comments and Questions

Attention: Chairman Petrillo, Chairman, and Members of the HSRA

The information meeting about the California High-Speed-Rail system that was held in San Jose on January 29 was a big disappointment. The recently released DEIR raises doubts whether or not it identifies all the significant effects (Ref. CA code 21002.1a) I did not hear a confident HSRA program to achieve the suggested system. Postponing the enabling bond vote makes it more unlikely. It looks like the corporate leaders in autos and aircraft will not share the travel load with rail.

I004-1

Executive Director Morshed invited questions and written expression of concerns about the DEIR. CEQA requires that an EIR be adequate, accurate and complete. (The standard for adequacy of EIR is found in CA Code 15150). The Altamont Pass route is a feasible alternative. If it is not included the DEIR may be deemed incomplete. (See Code 21002)

I004-2

A thorough peer review by the French TGV engineers would point out that central valley alignments along existing railroad rights-of-way would have tracks through developed urban areas. Significant effects would be more noise and slower travel times. TGV routes do not have these significant effects. Alignments over agricultural land uses would be cheaper to construct because of fewer grade separations and less reconstruction of existing property improvements.

I004-3

Tunnel alignments cost much more than at grade construction. They have different impacts on the surface land uses. Going under a public park does not eliminate impacts. The maximum design grade is very significant factor in determining total operating cost. The selected design consultant should be guided by experienced high speed train operations and not become a "taxi driver" causing longer construction times, unforeseen extras and over budget costs. A high cost rail system will not be deemed feasible by the public under current state budget problems. We also lack "corridor preservation" funds."

I004-4

Respectfully submitted,

Wayne M. Swan
Retired Civil Engineer and Planning Consultant
240 Kellogg Avenue, Palo Alto, CA 94301

Response to Comments of Wayne M. Swan, February 9, 2004 (Letter I004)

I004-01

Please see standard response 1.1.105 regarding the difference between program EIRs and project-level EIRs.

I004-02

Please see standard response 2.18.1.

I004-03

Please see Response 2.25.1 in regards to “new” alignments through agricultural lands. While there would be more potential noise impacts for alignments that serve urban populations than a new alignment through agricultural land that avoided urban areas, the travel time differences would be marginal. The Program EIR/EIS describes potential impacts to California’s affected environment, which is very different from the environment in Europe or Asia.

I004-04

Tunnel alignments generally cost much more than at-grade construction. Although tunneling cannot completely eliminate surface impacts in all places (e.g., tunnel portals are at the surface), it can greatly reduce them and can leave some places untouched. The effect of the maximum gradient and the length of sustained grades on operating costs have been factored into the operating cost estimates described in Section 4.3.2. The extent (length and steepness) of the gradients implemented on the HST alignments have a direct impact on power usage. The costs of power are estimated to be approximately 18% of the total costs for operating and maintaining the HST system annually.

Comment Letter I005

2/15/2004 9:51 AM FROM: FAX TO: 1 916 322-0827 PAGE: 002 OF 002

I005

ALBERT S. PRATT
"Since 1919"
40470 Brixton Cove
Temecula, CA 92591
Email: sampratt@nctimes.net
(909) 699-8689

California Registration:
Civil Engineer No. 7697
Structural Engineer No. 650

Sunday, February 15, 2004

Fax:
(916) 322-0827
Attn: California High-Speed Train
Draft Program EIR/EIS Comments

Subject: California High Speed Rail (CHSR)– Comment on EIR/EIS

On the positive side I fully support the project and have monitored the progress of the design almost from its inception.

I will be 85 years old on April 26, 2004. Completion is expected by the year 2020 and I will be 101 years old. This is not a facetious statement as my health is excellent, and the new IRS Life Expectancy Table offers a lower curve of 10 years, but excitingly, an upper curve of 22 years. With this maximum life expectancy possibility I will be able to ride the CHSR for 6 years after completion. I contemplate the possibility that I may need help boarding the train during those 6 years.

I have been immersed in the impact of our national auto culture for over 50 years. It has been continually clear during that period that auto production – enhanced by multi billion dollar marketing – has outpaced the ability to provide lane miles of arterials and freeways to accommodate this American love affair with their cars.

The CHSR Project has unbridled political and media appeal as well as the practical need of high speed rail in our state to serve future transportation needs between our major California population centers.

The present impact of 50 years of developing auto culture and the inability to provide arterials and freeways to meet the demand (nor will they ever) has resulted in the automobile becoming the greatest Weapon of Mass Destruction (WMD) the world has ever experienced. With lives lost, serious injury and the value of property damage exceeding that of all of the wars we have ever been engaged in since 1776.

The impact today is continuing the loss of life, serious injury, property damage, but is also affecting family life and our economy by the increasing time away from home of the "breadwinners" driving to and from their employment.

The CHSR Project must include immediate massive implementation of local and interurban convenient and affordable public transit design to easily access the CHSR. Our State Legislature contemplated this need in 1989 with the passage of a State Statute Section 65068 of the Government Code.

I again state that I unequivocally support the CHSR with the addition of convenient and affordable local and interurban public transit.

Sincerely yours,

Albert S. Pratt

I005-1

Response to Comments of Albert S. Pratt, February 15, 2004 (Letter I005)

I005-01

Acknowledged.

Comment Letter I006

FROM : Lipton

FAX NO. :

Feb. 16 2004 07:44AM P1

I006

Werner J. Lipton
4550 E. Redlands
Fresno, CA 93726-6228

phone 559/229 - 8486

fax 559/229 - 1829

16 February, 2004

California High-Speed Train
Draft Program EIR/EIS Comments
via fax 916/322-0827

To whom it may concern:

p. 1/2

We, the undersigned, submit the following comments for consideration:

1. The proposed system should be designed to carry so-called light freight along its entire route. Thus, all alignments (grades and curves) must accommodate this service, which would provide revenue for the system, help relieve road congestion and reduce air pollution.

I006-1

2. The alignment should minimally impact towns that will not receive a direct benefit from the service. Thus, the route should follow the Burlington Northern/Santa Fe route between Bakersfield and Fresno.

I006-2

3. The Fresno station should be downtown, with an express bypass to the west, aligned for minimal impact on agricultural production, natural water systems and other ecologically important features of the area. An elevated system might accomplish this goal most effectively.

I006-3

4. The route from the San Joaquin Valley to the coastal area should avoid park land, even if the cost is higher than alternate routes. Once gone, the park land is gone forever. Costs can be recouped over decades.

I006-4

5. There should be no station in Los Banos because it would encourage sprawl development due to commuters from the Bay Area. The land in the area must be preserved for agricultural purposes. Such an influx of people and their cars also would negatively impact air quality in the S. J. Valley.

I006-5

FROM : Lipton

FAX NO. :

Feb. 16 2004 07:45AM P2

High-Speed, Lipton, p. 2/2

6. The cost-benefit analysis, which we assume will be thorough, must include not only dollar denominated factors, but also indirect impacts, such as effects on air quality, noise pollution, traffic-related deaths and injuries prevented, by having fewer cars on the road, etc.

I006-6

7. Consideration must be given to the source(s) of power for the system, i.e. are currently operating or planned power plants sufficient to serve the system reliably? If additional power generation is needed to serve the system, who would pay for it? Where would the plants be located? If needed, would they be ready in time?

I006-7

8. No further consideration should be given to mag-lev.

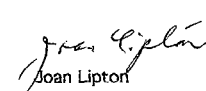
I006-8

9. The importance of effective and readily accessible linkages between the high-speed system and other modes of transportation, ground and air, need to be emphasized in communications with local officials and the public.

I006-9

We thank you for your consideration of our suggestions and look forward to a successful effort to build a high-speed train system in California.


Werner J. Lipton


Joan Lipton

Response to Comments of Werner Lipton, Joan Lipton, February 16, 2004 (Letter I006)

I006-01

Please see standard response 2.7.3.

I006-02

Acknowledged. Please see standard response 6.15.4.

I006-03

Acknowledged. The Authority has identified the downtown Fresno station as the preferred location for an HST station to serve the Fresno area.

I006-04

Please see standard response 6.3.1.

I006-05

Please see standard response 6.3.1.

I006-06

The Program EIR/EIS does not include a “cost-benefit” analysis. The Authority did include a cost-benefit analysis as part of the feasibility studies that preceded this environmental analysis. This work has been available on the Authority’s website (www.cahighspeedrail.ca.gov).

The Program EIR/EIS does include analysis of potential impacts on the environment, including air quality, noise, waters, agricultural lands, etc. as required by CEQA and NEPA.

I006-07

Please see standard response 3.5.3.

I006-08

Acknowledged.

I006-09

Acknowledged.

Comment Letter I007**I007**

KEVIN C. WENG
MS - OCEANOGRAPHY
1042 JEWELL AVE
PACIFIC GROVE, CA 93950
TEL: 831-915-0296 FAX: 809-423-4204
KEVIN.CM.WENG@STANFORD.EDU

17 February 2004

Chair Joseph Petrillo and Board Members
California High-Speed Rail Authority
925 L Street Suite 1425
Sacramento, CA 95814
Fax (916) 322-0827

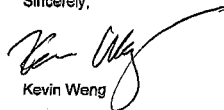
RE: No to Diablo; Yes to Altamont

Dear Mr. Petrillo and Board Members:

Please remove from consideration the two high-speed rail routes that would run through the heart of Henry Coe State Park and the San Luis Reservoir Recreation Area; and include the Altamont Pass option. While I am in favor of a High Speed Rail system for California, the Diablo routes would have unacceptable environmental impacts and do not go in the right direction to service the San Francisco to Sacramento transportation demand.

I007-1

Sincerely,


Kevin Weng

NO. 8959 P. 1

FEB. 17. 2004 11:24AM SU HOPKINS MARINE 831-975-0793

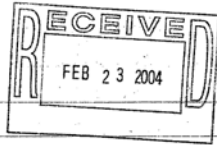
Response to Comments of Kevin Weng, February 17, 2004 (Letter I007)

I007-01

Please see standard response 6.3.1.

Comment Letter I008

I008



Joseph Petullo, Chair
High Speed Rail Authority
925 L St. Suite 1425
Sacramento, CA 95814

Dear Mr. Petullo,

I'm writing you because I'm very saddened to hear about the proposed routes for a high-speed rail. I think the rail is an excellent and long overdue project. It would greatly reduce air pollution and traffic and create much needed connections among California cities. I lived in Japan for many years and know first-hand how beneficial efficient mass transit can be. We desperately need it, and I would whole-heartedly support it... if it did not threaten so much ecologically fragile land.

Please do not construct the route through Henry Coe State Park, the Nature Conservancy or Pacheco-San Luis Reservoir areas. These beautiful areas are home to countless animals, plants, birds, & insects that would be endangered or killed. It doesn't make sense to me. It seems to me that one of the main reasons for mass transit is to preserve our natural environment by decreasing

Roll: ... A ...

o ahead and destroy nature with drilling and tunnels and construction for the rail, what will we have gained?

I don't claim to know all the details of the plan, but my assumption is that the Diablo & Pacheco routes are being proposed for budgetary reasons. Even though they may be cheaper in the short-term, what about the huge environmental price tag we'll all have to pay in the long run? What benefit will it bring to be able to quickly get from L.A. to Morgan Hill or San Jose when our few remaining pristine wildlife areas will be irrevocably harmed?

Ms. Petullo, you have the power to greatly influence many people and the position to either protect or destroy California's wildlands and the hundreds of thousands of living creatures that live here. Mr. Petullo, you and the other members of the board have such an incredible responsibility in front of you - I don't envy that. But I do support and encourage you - to listen to the community, to the Sierra Club, to environmentalists, and to your heart. Please take the time and money needed to explore other more ecologically sound routes (such as Altamont Pass) for the high speed rail. ~~Most importantly~~

I thank you, not only for how you can help me & other concerned people rest easy, but on behalf of the voiceless creatures depending upon your decisions.

K. Campbell
260 W. Dunne Ave #111
Morgan Hill, CA 95037

Sincerely,
Kathleen Campbell

1008-2
cont

1008-3

1008-1

1008-2

Response to Comments of Kathleen Campbell, February 23, 2004 (Letter I008)

I008-1

Acknowledged.

I008-2

Please see standard response 6.3.1.

I008-3

Please see standard response 2.18.1.

Comment Letter I009**I009**

NO HIGH SPEED RAIL ROUTES IN HENRY COE STATE PARK

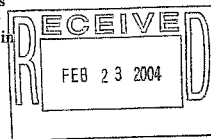
Page 1 of 1

NO HIGH SPEED RAIL ROUTES IN HENRY COE STATE PARK!

Chair Joseph Petrillo and Board Members:

I am in favor of a High Speed Rail system servicing California, provided this can be carried out in an environmentally responsible manner. I understand the California High Speed Rail Authority is considering two high speed rail routes that would run through the heart of Henry Coe State Park, cutting the Orestimba Wilderness in two. Neither of these routes is acceptable. Please remove these two routes from consideration.

Signature *Rosario F. Morales*
Name ROSARIO F. Morales
Address 990 Oak Park Drive
City Morgan Hill State CA Zip 95037
Phone Day 408 846 9964 Eve. _____



I009-1

Response to Comments of Rosario Morales, February 23, 2004 (Letter I009)

I009-01

Please see standard response 6.3.1.

Comment Letter I010

I010**Re: Dan**

From: Bob Patrie & Toni Hill [rdptwh@cruzio.com]
Sent: Tuesday, February 24, 2004 1:14 PM
To: dleavitt@hsr.ca.gov
Subject: GIS data for HSR alignment options

Mr. Leavitt,
I have concerns about the possible High Speed Rail alignments described in the DEIR and their impact on State Parks, State Beaches & State Recreation areas. However, the maps included in the DEIR lack the detail needed for my analysis.

Could you provide me with GIS data (ArcInfo/ArcView) that will allow me to more precisely analyze the routes?

Thank you
--bob patrie

8 Deer Trail Way
Scotts Valley, CA 95066

(831) 438-0153

I010-1

1

Response to Comments of Bob Patrie, February 24, 2004 (Letter I010)

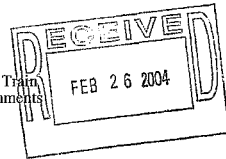
I010-01

GIS data was provided by Parsons Brinckerhoff on February 24, 2004 that included the HST alignment options.

Comment Letter I011

I011

120 Camrose Pl.
Walnut Creek, Calif. 94596-6722
Feb. 25, 2004



Attn: California High Speed Train
Draft Program EIR/EIS Comments
925 L Street
Sacramento, Calif. 95814

Sirs:

The following comments are based on the the environmental studies folder you recently mailed to me:

- | | |
|--|--------|
| 1) Gilroy is becoming a bedroom community for SF peninsula workers therefore the SF branch should pass through it and follow Hwy 152 to the valley main line bypassing Merced.. Merced is already served by the main line. | I011-1 |
| 2) To offer a competitive time to LA the main line should be as short as possible therefore the main line should bypass Palmdale and follow I 5. | I011-2 |
| 3) The reason for duplicate service between LAUPT and Irvine is not clear. Why not run the main electrified route directly to San Diego and the non electrified route the longer way through Ontario airport ,Temecula, etc. to San Diego? | I011-3 |
| 4) The multiplicity of stations between LA and San Diego may be politically expedient but it will slow the schedule unless there is local service proposed. The non electrified route through the inland cities could provide this service. | I011-4 |
| 5) The branches to LAX and Ontario airports would be better served by some form of shuttle using diesel railcars originating at LAX. Since there are major airports at Sacramento and the Bay Area there is no need to have high speed trains from the north going directly to either LAX or Ontario. | I011-5 |
| 6) I have heard rumors that the Sacramento terminal may be located in the southern part of the city instead of at the proposed transportation center at the current Amtrak station. This is not logical as it is absolutely essential that all transportation systems interconnect. Political influence must be kept to a minimum. | I011-6 |
| 7) A SF terminal should be located at the ferry building and interconnect with Caltrain, BART, Muni, and the ferries. | I011-7 |

Thank you for the opportunity to comment,

John F. Munro
John F. Munro, P.E. (ret.)

Response to Comments of John F. Munro, P.E. (ret.), February 26, 2004 (Letter I011)

I011-01

Please see standard response 6.3.1.

I011-02

Please see standard response 6.23.1.

I011-03

HST construction “directly to San Diego” (either along the LOSSAN rail corridor or I-5) was considered and rejected. The reasons for this conclusion are summarized in Sections 2.6.8 and 2.6.9 of the Program EIR/EIS. Please see standard responses 2.21.1, standard response 2.30.1, and standard response 6.42.1.

I011-04

All the stations locations shown in the Draft Program EIR/EIS document are potential station locations. The co-lead agencies have selected the following preferred HST station locations between Los Angeles and San Diego along the I-215/I-15 corridor: Los Angeles (LAUS), East San Gabriel Valley, Ontario Airport, Riverside, Murrieta, Escondido, University City and San Diego. The HST service would be offered at several levels (express, suburban express, skip-stop, local, etc.). The intermediate stations would be designed with four tracks to allow for express services to bypass local services. Operational analysis suggests that these stations can be effectively served by local services, without slowing the schedule of the express services.

I011-05

Acknowledged. The Authority has identified that the statewide HST system would include service to San Diego (Draft Program EIR/EIS,

Section 2.6.8 [A]) and that the only feasible option for direct HST service to San Diego is via Inland Empire (and Ontario Airport) and the I-215/I-15 corridor.

Please see standard response 6.39.1 regarding a potential HST link to LAX. The Authority has identified a HST system that would include direct service to San Diego, and that the I-215/I-15 corridor (via the Inland Empire) is the only practicable alignment to connect Los Angeles and San Diego.

The Ontario Airport HST station along the Los Angeles to San Diego (via Inland Empire) corridor supports the objectives of the HST project by providing an interface with one of the larger airports in southern California. This station would also provide direct HST service to San Bernardino County.

I011-06

Acknowledged. The Authority has identified the Downtown Sacramento site as the preferred HST station location to serve the Sacramento area.

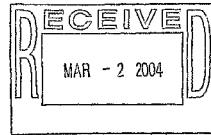
I011-07

This site adjacent to the San Francisco Bay would have major constructability issues and has not been considered by the City of San Francisco or the local and regional transit providers as a potential Transbay Terminal rail transit hub station site. The Draft EIR/EIS identifies potential San Francisco HST station terminus sites at the Transbay Terminal and 4th and King, each of these would provide multimodal interconnections (see page 6-17 of the Draft Program EIR/EIS).

Comment Letter I012

I012

February 28, 2004
Joseph Petrillo, Chair
High Speed Rail Authority
925 L Street, Suite 1425
Sacramento, Ca. 95814



Dear Mr. Petrillo,

I am writing you to express two concerns. The first is that I wholeheartedly support the need for a high-speed rail system in California. At a time when the Bush administration is talking about cutting funds for Amtrak again, this is more important now than ever. Thank you for all your work on this issue.

I012-1

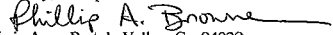
The second concern that I have is one about which I feel even stronger. I strongly object to the idea of running the rail system through Henry Coe State Park. The "Diablo Direct" route is one which I believe would cause irreparable damage to one of California's biggest and finest State Parks. The train should not, under any circumstances, go through the park. Coe Park is an amazing wilderness park that should continue to be protected. The "Diablo North" and the "Pacheco" routes also would seriously impact precious wildlands and habitat.

I012-2

I have been a resident of the mid San Francisco-peninsula all my life and first experienced the beauty and wonder of Coe park more than 30 years ago as a young Boy Scout. I love the fact that it still exists virtually unchanged since that time. Coe is the second largest State Park (after Anza Borrego). My great grandfather, Charles B. Wing was one of the original founders of the California State Park System. Even back around the turn of the last century, he and others realized the need to protect and preserve some large portions of California in its natural state. The State Park System and other wilderness areas in California are an extremely important part of my life. Boring tunnels through the mountains and building the subsequent roads would forever change this beautiful wild place.

I strongly urge you to consider inclusion of the Altamont Pass route in your environmental review process. This route would more closely follow the existing highly developed transportation corridor. I feel this routes make the most sense both environmentally and economically. Thank you for your time and consideration.

I012-3

Yours truly, Phillip A. Browne

67 Santa Maria Ave., Portola Valley, Ca. 94028

Response to Comments of Phillip A. Browne, March 2, 2004 (Letter I012)

I012-01

Acknowledged.

I012-02

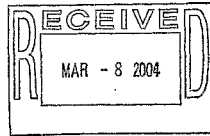
Please see standard response 6.3.1.

I012-03

Please see standard response 2.18.1.

Comment Letter I013

I013



7 March, 2004,
SAN Leandro, CA.

JAMES G Dalrymple

Calif. HIGH Speed Rail Authority
Gentlemen,

In response to your invitation for comments on EIR/EIS and attracted by your request for possible new technologies. I offer the following. Wheel/Rail technology dates back about 150 years. For low and moderate speed service it is OK. But, for high speed it is absolutely inappropriate. For many years Magnetic Levitation has been considered as the alternative. However, Maglev theory has far outweighed its reality. Consider these many years passed and millions of dollars invested, there is not a single Maglev revenue system in service. Some are still being worked on in ASIA and in Europe.

I offer a plan for Ultra High Speed Rail that is far superior to both Wheel/Rail and Maglev.

My system will utilize all the operational functions of Maglev except for the magnetic levitation. The train cars will glide over rails topped with a plastic material thick enough to support the cars and of a quality similar to that used for dry bearings. (for one, Teflon) steel whose coefficient of friction is very low. A train equipped with ski-like runners will allow the unit to attain speeds almost unlimited. The simplicity of this design will provide the following advantages:

1. Almost unlimited speed.
2. Reduced weight --no trucks with wheels, motors and their associated hardware.
3. Efficient use of electrical power. No electromagnets.
4. Can be locked into the rail structure for maximum safety.
5. This system can be developed sooner and at less cost than any other.
6. High reliability can exceed that of both alternatives.
7. The technology for propulsion and train control developed for Maglev can be applied directly to this train system.
8. Quiet operation. Can be perfectly silent

I have presented these thoughts to the Authority some time ago but they were dismissed because wheel/rail was the preferred mode. I hope to have you reconsider and put Cal. High Speed Rail into the 21st century and ahead of all others.

Let's get it right!

Copy To FRA

Sincerely

James G. Dalrymple

1536 137th Ave

San Leandro CA 94578

Phone (510) 357- 3840.

James G Dalrymple

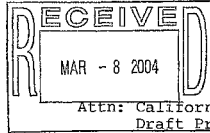
I013-1

Response to Comments of James G. Dalrymple, March 8, 2004 (Letter I013)

I013-01

The preferred technology identified in the Draft EIR/EIS for the proposed HST system is electrically-powered steel-wheel-on-steel-rail train technology. Maglev technology was considered and rejected from further investigation. Please see standard response 2.12.2 in regards to electrically powered steel-wheel-on-steel-rail HST technology, and standard response 2.10.3 in regards to the Authority's decision that the HST technology must be capable of sharing tracks with other existing services.

No HST system operates at high-speeds anywhere in the world in revenue service or on a full-scale test track where "train cars will glide over rails topped with a plastic material." The Authority has proposed the implementation of a statewide HST system using technology which has been proven in commercial service, rather than proposing further research and development for new technology which has not yet been developed for commercial service.

Comment Letter I014

ATTN: California High-Speed Train
Draft Program EIR/EIS Comments
925 L Street, Suite 1425
Sacramento, CA 95814

From: Bertha Vega (Wallace) Hansen
PO BOX 1972
Fresno, CA 93718-1972

I014

**The
Future
is Now!**
Support Our
New
Transportation



As a member of the Public Transportation, I am requesting that The Future of our new Transportation is to built a High-Speed Train System. Why can't we built a single lane on the hills of Grape Vines where we have seen vehicles where they can't move, on on account of the snow during the winter season. I feel that how much it cost us tax-payer to built a tannuel where we don't know if we can afford it. Please review my comments that if we were to get some public review, and get the public to get interest, we would see that would be the best of our goals that we are looking for.

Thankyou for taking some time to see and supporting our Transportation that has become an essential part of California Economic Development and future transportation needs.

I014-1

Bertha V. Hansen

Bertha V. Hansen
3-3-04

Member of
Public Transportaion
Steering Committee



CALIFORNIA HIGH-SPEED RAIL AUTHORITY



U.S. Department
of Transportation
**Federal Railroad
Administration**

Response to Comments of Bertha Vega (Wallace) Hansen, March 8, 2004 (Letter I014)

I014-01

Acknowledged.

Comment Letter I015

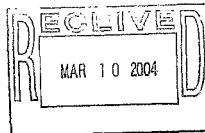
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PAGE 01

I015

JOSEPH P. THOMPSON
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 Telephone (408) 848-5506; Fax (408) 848-4246
 E-mail: TransLaw@PacBell.Net
 website: <http://home.pacbell.net/translaw>
 March 10, 2004

TELECOPIER: 916-322-0827
 Mr. Mehdi Morshed, Exec. Dir.
 High Speed Rail Authority
 925 L Street, Suite 1425
 P. O. BOX 942874, MS-74
 Sacramento, CA 95814



Re: Public Comment HSRA's Environmental Impact Report

Dear Mr. Morshed,

Thank you for allowing members of the public to comment on HSRA's EIR, which I read at Gilroy's Public Library. It was good seeing you again outside the Capitol in Sacramento

Identity of Author. I am a member of SBC Safe Kids Coalition and Citizens for Reliable And Safe Highways (CRASH), and COG's Rail Advisory Committee, the Legislation, Arbitration, Intermodal and Freight Claims Committees of the Transportation Lawyers Association, the Association for Transportation Law, Logistics & Policy, Conference of Freight Counsel, and a candidate for the American Society of Transportation and Logistics, and other professional organizations in our community, our State and our Nation. I have 41 year experience in the transportation industry here in the South Bay Area and Central California Region. I have had the good fortune to do post-doctoral study of transportation law and policy at the Mineta Institute at SJSU, TRB at Georgetown University, and the Library of Congress. My comments are merely my own, however, and not submitted on behalf of RAC, TLA, ATLLP, AST&L, CFC, or any organization to which I belong, but are only my own ideas as a post-doctoral student of transportation law and policy.

Background. I appeared before HSRC five times and made public comments (SF, LA, Fresno, Bakersfield and San Jose). Please refer to my previous letters to your predecessor Mr. Leavitt, and to Honorable Quentin Kopp, Honorable Edward Jordan, and Honorable Michael Tennenbaum (see copies enclosed).

Summary. Despite the shortcomings of private sector transportation, the history of the last century proves that nationalized industries, e.g., transport, spell certain defeat and doom for nations that adopt public-sector, nationalized transportation. While carriage of passengers by rail is desirable, creating a public-sector Frankenstein is a cure worse than the illness. Maybe socialized countries like France, Germany, Sweden, etc., have enough history and residents invested in governmental solutions, but American ideals of freedom, independence, democracy and capitalism should not be

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PAGE 02

sacrificed to the False God of Socialism. From rickshaws to bullet trains to lunar escalators, private sector solutions, like our existing railroads, i.e., UP, CSX, BN-ATSF, etc., are what our government should be creating and encouraging. Mistakes like Amtrak, BART, Lite Rail, etc., only burden the taxpayers with ill-considered socialist philosophy. Marx, Engels, Lenin, Trotsky and Stalin were wrong in their day, and their ideas are wrong for America.

As I said to HSRC, if you put enough UPS, Fedex, and Postal Service tonnage on HSRA's trains, then you would not need to ask the taxpayers for a dime. Your idea for a Soviet-style horizontal elevator, funded by taxes, is something that Californians don't need and cannot afford. Like Wells Fargo, HSRA's idea could work if you combined freight revenues with passenger fares. All the externalities that Senator Costa mentioned are insufficient justification to place this albatross on future generations.

I015-1
 cont

Comment. I here restate my opposition to you as I presented at five of HSRC's meetings, and direct your attention to my paper, which I wrote while doing post-doctoral study at the Mineta Institute at SJSU, "ISTEA Reauthorization and the National Transportation Policy," 25 *Transportation Law Journal*, pp. 87-*et seq.* (1997), which was published in shortened version as "ISTEA Reauthorization and the National Transportation Policy: Overlooked Externalities and Forgotten Felt Necessities," *Transportation Lawyer* (Dec. 1997). The fundamental unsoundness of your HSRA plan for California's bullet train is best understood in comparison with the critical thinking of JFK School of Government and Harvard University Professors José A. Gómez-Ibáñez and John R. Meyer, *Going Private: The International Experience with Transport Privatization* (Wash., D.C.: Brookings Institution, 1993), and also John D. Donahue, *The Privatization Decision: Public Ends, Private Means* (New York: Basic Books, 1989). It is time for us to join the world-wide "privatization revolution," not build more government. If we defeated the USSR, then why should we adopt their failed economic philosophy.

Caveat Viator!

Respectfully yours,

JOSEPH P. THOMPSON, ESQ.

Encl.

cc: Editor Gilroy *Dispatch*
 cc: HSRA Members via Mehdi Morshed

Comment Letter I015 Continued

JOSEPH P. THOMPSON

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 Telecopier (408) 292-1061

February 16, 1996

The Honorable Quentin Kopp
 CALIFORNIA STATE SENATE
 2057 Capitol Building
 Sacramento, CA 95814

Re: California Transportation Policy

Dear Senator Kopp,

While the need for high speed passenger trains in California, and the entire Nation, is obvious to any student of transportation, it appears to me that the HSR Commission is completely ignoring the only viable alternative to providing them.

Instead of using the existing railroads, staying with private enterprise, which past generations bequeathed to us, the Commission seems to be hypnotized by socialism. At a time when privatization around the world is correcting the mistakes of publicly-owned transportation, e.g., Australia, Canada, New Zealand, England, Western Europe, etc., the Commission seems to be falling under the fatal attraction of a ruinous fiscal belief that cost does not matter.

Do we have the ability to learn from our history? Will we ignore it and be condemned to follow the course of the Soviet Union? IISTPS Executive Director Ron Diridon, addressing the students at SJS, said that transportation decisions hinge on three things, "Finance, finance, finance." Rather, I believe it hinges on policy, because the latter predetermines the former.

The legislative findings in SCR 6 are undoubtedly true, but the solution currently being proposed by the Commission is a nightmare, which, if brought into existence, will certainly plunge us down the path followed by the Soviet Union.

Why not consider changing policy to attain the same goal? Why seek to ruin California's economy in a search for "finance," when by adherence to the nation's transportation policy, and its rail transportation policy, we could have bullet trains without spending tax dollars? If this country had adhered to these national policies since the end of WWII, would we have seen thousands of miles of

Hon. Quentin Kopp
 February 16, 1996
 page 2

track abandoned? Would we have invested untold billions in the creation of the interstate highway system? Would we be addicted to automobiles today? Are we in denial about our addiction, which blinds us to our violation of our own national transportation policies?

If the law said: (1) freeze truck lengths, (2) prohibit triples, (3) return weight limits to something that would not break concrete freeways, (4) reverse the intercity freight trend since WWII, then how much less money would we need for such things as: (1) highway maintenance, (2) fuel, (3) injury, death, property damage expenses? If policy were made by wiser men than we seem to have had in charge since the end of WWII, would we have (1) cleaner air, (2) less highway congestion, (3) lower health care costs?

If the government is in control, why not set transportation policy and tell each mode what it was going to do based on decisions favorable to the people? If we can move freight profitably, but not passengers, then why not mix the two in one revenue stream to attain satisfactory corporate profit levels? Divorcing rail passenger from rail freight in 1970 was a big policy mistake, and some in Congress seem to have recognized that now by enacting legislation requiring Amtrak to break-even in seven years. Of course, without the freight revenues it can never do so in the face of highway and airline competition, and the vast federal subsidies given to those modes.

The solution lies in equal treatment by government of the different modes, and in freight revenue subsidizing the unprofitable passenger fares, just as earlier generations, who faced these same decisions, learned. While it might come as a shock to the Commission's staff and members, we have railroads. The trouble is that we ignore them and have favored their competitors with billions of dollars of subsidies. Our policy makers apparently prefer our citizens to use four times as much fuel to move our freight, and to sit on congested freeways, rather than establish transportation policy which capitalizes on the inherent advantages of the railroads. Amazingly, the stated policy is already in the statutes, but in practice we do not follow it! Why?

The Commission's current study suffers from myopic concentration on a fantasy, rather than realistic appreciation for the wisdom of earlier generations. Why are the Commissioners not investigating the obvious solution of using our railroads to accomplish this goal? French and Japanese transit systems, like

Comment Letter I015 Continued

Hon. Quentin Kopp
February 16, 1996
page 3

those in this Country, operate at a huge loss, requiring taxpayer subsidies of ever more scarce tax dollars.

Instead of trying to imagine millions and billions of dollars, this needs to be put in terms that are understandable, and revealed to the voters for what it is. For example, when Amtrak was formed in 1970 it was cheaper to send a passenger from LA to NY by taxi, and pay the cabbie a \$100 tip, than to send him by Amtrak. When METRO was built in Washington, D.C., it was cheaper for each rider to be furnished with a Mercedes than to ride public transit. For BART, the riders could have two BMW's and the taxpayers were better off.

Of course, these solutions are just as stupid as the ones our decision makers and planners gave us. The arrogance of today is to forget the wisdom of the past. Who gained by selling those cars, building those interstate highways?

Harvey Levine's seminal work, National Transportation Policy: A Study of Studies, ought to be required reading for both the Commissioners and the staff, not to mention our decision makers.

When we needed a transcontinental railroad, did we opt for government-owned railroads? Whenever WWI's demands caused nationalization of the railroads, did we keep them that way? Does government owned business work in the long run? Do we want to go the same way as the Soviet Union?

No!

When I testified 2/2/96 before the Commission in Fresno, I showed them the Harvard doctoral dissertation by John D. Donahue, The Privatization Decision (1989), and reminded them of the Wall Street Journal special edition on privatization that was published in October. I said that if they were a board of directors of a corporation then they would have been terminated. They did not effectively cross-examine the experts brought before them by their own staff. They did not realize that the "profits" displayed by the French Officials were for a trunk line route, and that the truth is that system-wide the French experience is no better than that of the best American public transit system. They are considering borrowing billions to create a line that will require \$800 million annually just to service the debt (bonds) it creates! There can be no doubt that Big Brother's slogan pales in comparison with this proposal: "WAR IS PEACE, FREEDOM IS SLAVERY, IGNORANCE IS STRENGTH."

Hon. Quentin Kopp
February 16, 1996
page 4

As I said to Mr. Mineta, we are, I believe, about half nationalized and half free-enterprise in transportation. Can this situation last? It is not unlike an earlier period in our history:

"If we could first know where we are, and whither we are tending, we could better judge what to do, and how to do it. We are now far into the fifth year since a policy was initiated with the avowed object and confident promise of putting an end to slavery agitation. Under the operation of that policy, that agitation has not only not ceased, but has constantly augmented. In my opinion, it will not cease until a crisis shall have been reached and passed. A house divided against itself cannot stand."

At this point, too, we are at a crucial stage of evolution in the nation's history: We are a house divided.

The Lincoln administration decided that our railroads would be privately owned, with construction financed by government-backed securities. Today we appear to have rejected the policy of free-enterprise ownership because we continually create "authorities" and "agencies" to own and operate our rail passenger mode. The same is true with bus transportation. Now I hear that Amtrak will be moving freight. We have abandoned not only thousands of miles of rail, but as a nation we have also abandoned the policy of private ownership of transportation. Our elected officials boast about what they have done, but not one of them will tell you how much it costs per passenger (or per passenger-mile) to transport people by bus or rail. Deregulation during the past 15 years has rendered the private transportation sector a virtual graveyard. So where are we, and where are we going? How can we have nationalized industry and reduce the budget deficit?

To paraphrase Mr. Lincoln, if we could first know where we are, and "whither we are tending," we could better judge what to do, and how to do it. Our national transportation policy was initiated with the "avowed object" and confident promise of creating a sound national transportation system. Under the operation of that policy,

Comment Letter I015 Continued

Hon. Quentin Kopp
February 16, 1996
page 5

one national goal is to make the county competitive on the global arena. In my opinion, it will not happen until a crisis shall have been reached and passed.

Today we are at a point where we are half slave to public ownership of transportation, and half free-enterprise. The trend, however, runs counter to private ownership. Reversing the trend becomes increasingly difficult as we commit vast resources of our society to nationalized modes.

Again to paraphrase, I believe that the nation's transportation system "cannot endure permanently half slave and half free." I do not expect the nation will be dissolved; I do not expect the house to fall; but I do expect it will cease to be divided. It will become all one thing, or all the other. Either the opponents of nationalization will arrest the further spread of it, and place it where the public mind shall rest in the belief that it is in the course of ultimate extinction, or its advocates will push it forward till it shall become alike in all modes of transportation.

We will then have arrived at the stage of development, and an experience similar to that of the demise of the Soviet Union must ultimately follow because government-owned industry does not work in the long-run. Great Britain and other western European countries, Canada, Australia and New Zealand are all privatizing previously nationalized industries because they have realized the truth in this. Nevertheless, our elected representatives push for more government-owned transportation modes each passing year.

Today we could send six passengers by limousine from Gilroy to San Jose cheaper than it costs us to send them on Caltrain. Yet if private industry moved those passengers and a fair share of the available freight tonnage, the burden on the taxpayers would lessen, road congestion, health care costs, and air pollution would decline. Local government would enjoy another source of tax revenue.

Since WWII, creation of the interstate highway system has diverted a greater percentage of intercity freight traffic away from the rails each passing year. Separating freight from passengers on the railroads was a decision rejecting earlier generations' investments, and plunging us along a course toward Soviet-style industry, and we know how well that system worked.

Hon. Quentin Kopp
February 16, 1996
page 6

I keep asking our elected officials: If government ownership of industry failed in the Soviet Union, then why are we trying it? promoting it? How can America compete in "global markets" if it is saddled with deadweight nationalized transportation modes?

The Emperor has no clothes! We cannot afford to borrow billions to build a rail passenger line that loses millions each year. This is especially true when we have an existing alternative that will not cost the taxpayers any money at all. All it takes is someone strong enough to enforce the nation's transportation policies that are already on the books. We need not reinvent government to accomplish this goal, but rather, merely keep this a government of, by, and for the people.

Thank you for giving me an opportunity to make this comment. My formal response to the Commission will follow as soon as I complete it.

Respectfully yours,

JOSEPH P. THOMPSON

Encl.

cc: Hon. Henry Mello
cc: Hon. Dean R. Dunphy
cc: Hon. Peter Frusetta
cc: Commissioners
cc: Executive Director Daniel S. Leavitt
cc: Rod Diridon, HSTPS
c:\trans\kopp.lt1

Comment Letter I015 Continued

Hon. Quentin Kopp
February 16, 1996
page 6

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Respectfully yours,

JOSEPH P. THOMPSON

Encl.
cc: Hon. Henry Mello
cc: Hon. Dean R. Dunphy
cc: Hon. Peter Frusetta
cc: Commissioners
cc: Executive Director Daniel S. Leavitt
cc: Rod Diridon, IISTPS
cc: trans/kopp.ltl

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January 20, 1998

TELECOPIER: 916-323-5440

Mr. Daniel S. Leavitt, Executive Director
High Speed Rail Authority
P. O. BOX 942874, MS-74
Sacramento, CA 94274-0001

Re: Transportation Policy & California HSR

Dear Mr. Leavitt,

Thank you for the letter dated Jan. 8, 1998 addressed "Stakeholder," regarding the HSRA's meetings tomorrow 1/21 and 1/22/98. Unfortunately, due to previous litigation burdens I am not able to attend, but I would like to continue to receive notice of future meetings. As a "stakeholder," and an interested transportation student, who attended three of the HSRC's public meetings and spoke during the "public outreach" sessions, please convey my message to all the members of the HSRA, especially the Chairman, and assure them that I believe that their work to be of unparalleled importance for the future of this State. I pray that the HSRA members will adhere to Governor Wilson's private sector philosophy espoused in his new book, *California Competes*. Even though I cannot be at your meeting, I would like to have my recent articles from *Transportation Lawyer* and the University of Denver's *Transportation Law Journal* included in the public outreach response. I have previously furnished a copy of the shorter one to you and to Senator Kopp, and another copy is being mailed to you today. Thank you for giving me this opportunity to participate in your vital endeavor for California's future. *Caveat Viator!*

Sincerely yours,

JOSEPH P. THOMPSON, ESQ.

Encl.

Comment Letter I015 Continued

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May 14, 1998

TELECOPIER: 916-323-5440

The Honorable Edward G. Jordan, Chairman
High Speed Rail Authority
980 Ninth Street, Suite 2450
P. O. BOX 942874, MS-74
Sacramento, CA 94274-0001

Re: Transportation Policy & California HSR

Dear Mr. Jordan,

On behalf of "stakeholders" everywhere, I want to thank you and your fellow members for convening the HSRA's most recent meeting in San Jose, which, as you know, is the largest city in North America without an intermodal facility (see my letter to Secretary Slater enclosed). As I said to the HSRC in Fresno after Senator Costa's inspiring remarks, the HSRA takes its place in history amongst an established tradition of well-meaning, similar commissions, whose wisdom and follies Professor Levine so accurately described in *National Transportation Policy: A Study of Studies* (1978). Silicon Valley exemplifies the best and the worst in transportation policy dominated by public sector planners, and ought to serve as a clear lesson for you and the other members of the HSRA as you embark upon your historic quest to build HSR in California. As I said to you at the last meeting of the HSRC in San Francisco, there can be no doubting the noble endeavor you pursue when gauged by the President's last words to John Hay as he left for Ford's Theater.

I sincerely hope that my paper that I gave to you and the other members, "ISTEA Reauthorization and the National Transportation Policy," *Transportation Law Journal*, Vol. 25, No. 1 (1997), and the shorter version, "ISTEA Reauthorization and the National Transportation Policy: Overlooked Externalities and Forgotten Felt Necessities," *Transportation Lawyer* (Dec. 1997), will aid you in perceiving the historic position that you occupy. Moreover, I was encouraged by the members receptiveness at my recommendation that, as part of your next educational session in

Hon. Edward G. Jordan
High Speed Rail Authority
May 14, 1998
page 2

Bakersfield, they study Harvard University Professors Meyer and Gomez-Ibanez Brookings Institution multinational report, *Going Private: The International Experience with Transport Privatization* (1993), which I showed to you. A serious examination of the vital issues you face will not omit their timely, revealing work. If you do you must agree with me that the most crucial question for the Authority is the same one that our former Mayor and Congressman from San Jose posed in 1995, shortly before he left office and his chairmanship of the House Subcommittee on Surface Transportation.

I urge the Authority members to consider well Mr. Mineta's stirring words to the students at the International Institute for Surface Transportation Policy Studies (IISTPS) at San Jose State University, quoted in my paper. His conclusion, reached after long tenure on transportation and public works committees in the House, was that the most crucial question in transportation today is: "*What should government do, and what should it leave to others?*" His conclusion is reflected in Harvard Professor John D. Donahue's seminal work, *The Privatization Decision: Public Ends, Private Means* (1989), which is also cited in my paper.

Also, in your deliberations I urge you to consider the address given to the IISTPS students last summer here in San Jose by Congressman James Oberstar, who exhorted the students to look to our Pacific Rim neighbors' transportation activities for inspiration in the study of transportation policy for this Nation. I especially urge you to look at the recent history of our nearest Pacific Rim neighbor, and consider the dire consequences for this Nation if you and others like you take us down the same road that the Soviet planners took (see my letter to Congressman Oberstar enclosed).

As I said to you in San Jose, Senator Kopp's remarks at your investiture ceremonies in San Francisco on Nov. 13th, recalling the effort of the Big Four to create the Central Pacific, brought to mind Matthew Josephson's enduring *Robber Barons* (1934), wherein he relates the "P.R." campaign by Governor Stanford and his partners, Messrs. Crocker, Hopkins, and Huntington (see my letter to Senator Kopp enclosed). Where is the wisdom in trying to sell a fatally-flawed philosophy to the voters in California when recent history has proven that sustainable solutions must rely on the private sector, not Soviet-style fiascos. Look at the success of the Internet after it left government ownership. I am enclosing my reply to Senator Kopp, who wrote to me saying that the private sector would not give California a Bullet Train, and I urge you to make it part of your record so that

Comment Letter I015 Continued

Hon. Edward G. Jordan
High Speed Rail Authority
May 14, 1998
page 3

historians may know that you had a glimpse of a future to which your errors might condemn future generations (see enclosed play, *To the Panoche Station*, which was written when you were considering routing the HSR over Panoche Pass).

As you know, the genesis of Conrail shows us how politics can subsume transportation policy, just as the gang rape of the National Transportation Policy and the disintegration of the Interstate Commerce Commission do. Maybe there is no other option for a democracy than to endure what Mr. Justice Holmes called "the felt necessities of the time." But you must never forget President Lincoln's immortal words of advice to policy-makers like you and your fellow members: "Only we ourselves can cause our demise as a Nation." When you travel to other countries, peer deeply, and look beyond their Bullet Trains, and see their crushing tax burdens that their nationalized industries impose on their citizens. Ask yourselves if you want future generations of Americans and its incomparable enterprise and ingenuity encumbered by similar socialized notions. Ask yourselves: "If we defeated the USSR, why would we adopt their economic philosophy?" You cannot deny the existence of the world-wide privatization revolution, and the economic justification for the denationalization in transport in Canada, Mexico, Great Britain, Australia, New Zealand, and many other nations. As you consider how to create a sustainable high speed rail system in California, you must consider the historical background upon which we now stand. Rather than sponsoring a P.R. campaign to sell a fatal dose of socialism to the voters in California, I urge you to learn from history, and consider such multinational studies as the one by Professors Ott and Hartley, *Privatization and Economic Efficiency: A Comparative Analysis of Developed and Developing Countries* (1991). I believe that California deserves no less from you in your planning this great transportation system.

I look forward to participating in the educational meeting that you hold in Bakersfield on the 20th of this month.

Respectfully yours,

JOSEPH P. THOMPSON, ESQ.

Encl.
cc: HSRA Members

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June 14, 1999

TELECOPIER: 916-323-5440

The Honorable Michael Tennenbaum, Chairman
High Speed Rail Authority
925 L Street, Suite 1425
P. O. BOX 942874, MS-74
Sacramento, CA 95814

Re: Transportation Policy & California HSR

Dear Mr. Tennenbaum,

Congratulations on your elevation to the position of Chairman of the HSRA. Please add these remarks to the next "public comment" section of your next meeting in Los Angeles on the 18th.

In response to your new route option over our local Pass east of Gilroy, I have revised *To the Panoche Station*, and now name it *To the Pacheco Station*. Apologies are still owed to the author of *To the Finland Station*, the construction estimate was revised upward to match your latest dream (or nightmare, depending upon whether you receive or pay the subsidies), but everything else stayed unchanged. I did, however, kick the date from 2096 to 2099, to keep the century spacing with today. The good news for socialist transit planners is still there: "RIDERSHIP" numbers are way up. The bad news for the riders is still there: HSRA's BULLET TRAIN has not shown-up for a long time. (Perhaps it was the planning: infrastructure erected on socialism=the Soviet model for failure.) Have you read Solzhenitsyn's *The Gulag Archipelago* (1973), especially their futility running the Russian railroads with Soviet planners at the helm in chapter 2, "The History of our Sewage Disposal System"? What will history say about our generation: We defeated the USSR, and then adopted their economic philosophy? This is my reply to Senator Kopp's remark: "If the private sector won't build it, then the public sector will." You ought to convene your next meeting beside the plaque outside the Visitors' Center on the top of San Luis Reservoir, and require all supporters of the Soviet-style Bullet Train to read it aloud a hundred times, in unison. Then, you ought to ask for a moment of silence to remember all the small businesses that the socialist transit planners kill-off in the next century. *Caveat Viator!*

Respectfully yours,
JOSEPH P. THOMPSON, ESQ.

Encl.
cc: Editor Hollister *Free Lance*
cc: HSRA Members via Mehdi Morshed & Dan Leavitt

Comment Letter I015 Continued

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TELECOPIER: 916-322-0827

The Honorable Michael Tennenbaum, Chairman
 High Speed Rail Authority
 925 L Street, Suite 1425
 P. O. BOX 942874, MS-74
 Sacramento, CA 95814

Re: Transportation Policy & California HSR

Dear Mr. Tennenbaum,

Thank you for sending me the announcement about your business plan. Could you have Dan Leavitt mail me a copy? I'm curious to see if you are still planning a Soviet-style horizontal elevator, or whether you have decided to stay with capitalism, reject socialism, and run a railroad. I hope that you are not still trying to deceive the public into thinking that the public-sector can outperform the private sector in transportation. I hope that you are not planning to saddle California with the same socialistic HSR as we have witnessed in Japan, France and Germany.

As I said to the HSRC five separate times, if we defeated the USSR, what makes you think that we can make their failed economic philosophy work here in California?

Were you comfortable with all the socialist transit "gurus" at the VTA in San Jose? I suspect that you felt right at home with their socialist transit "senior planners," who would tax us into the same fate as befell the USSR. SCA-3 is just the start down the road to ruin. Will your PR "blitzkrieg" distort the truth in transportation? I hope not, but from what I have seen of the Politico-Transit Alliance, they will make the Robber Barons look like altar boys, and bring George Orwell's utopia to future generations of Californians. What will history say about your work? Please add my remarks to your public record, just so future historians know that you were warned. What will you nationalize next: farms, newspapers, retailing? *Caveat Viator!*

Respectfully yours,

JOSEPH P. THOMPSON, ESQ.

Encl.

cc: Editor San Jose *Mercury*

cc: HSRA Members via Mehdi Morshed & Dan Leavitt

TO THE PACHECO STATION

(with apologies to Edmund G. Wilson)

A Play in One Act

by

Joseph P. Thompson, Esq.

Act I

Scene One - A Spring Day, 2099

Pacheco Pass Bullet Train Station

Dramatis Personae

Boris Zlotoff, a passenger.

Elmer Schiekgruber, passenger.

Enter a passenger carrying his baggage, and gets into a seemingly endless line of people waiting for the train. In the background, graffiti covers all of the concrete walls of the dark, dilapidated station.

BORIS

Hello Comrade Schiekgruber.

ELMER

(Putting down his baggage and rubbing his beard.) Hello Comrade Zlotoff. I see you've found yourself a razor, you lucky dog. Where did you find it?

BORIS

(Quietly.) Well, of course I will not admit it, but I always told you, it's "who" you know, not "what." Besides, if I told then my source may dry-up on me.

ELMER

I suppose it is one of your contacts at the Ministry of Truth! Why are you so lucky?

BORIS

Comrade, please! Try to be a little circumspect! Well, if the train doesn't come today, all my contacts at the Ministry are going to evaporate. Dammit, they promised that it would run today!

Comment Letter I015 Continued

ELMER

How long have you been waiting in line?

BORIS

About two hours now. After waiting all day yesterday I'm a bit desperate to say the least! The Boss is expecting me at the Ministry. I've just got to get there.

ELMER

(Looking out over the audience.) I wonder what the view was like here a hundred years ago--before they built the Bullet Train through the pass?

BORIS

Or better yet, what about two hundred years ago when the miners opened-up the New Idria Mine? They must have been a sturdy bunch to survive out here.

ELMER

Dirty capitalist diggers be damned! But at least they had razors! Say, when do you think it all turned against their kind?

BORIS

What do you mean?

ELMER

Their dirty capitalist system--whenever did it start to changeover to ours?

BORIS

(Looking both ways and over his shoulder.) Well, you know, at the Ministry of Truth I re-wrote a few stories about the initial phases of this damned Bullet Train System, so that its early successes would not contrast with the mess we have today. It may have actually been the crucial turning point from the old system to ours.

ELMER

You mean that this Train was running successfully once?

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BORIS

(Again looking over his shoulder.) Yes, in the early days after it was built, about 2010. Back then it was running daily and right on time with the published schedules!

ELMER

Remarkable!

BORIS

Well, anyway, it was when Comrade Peter Frusetta was the People's representative, or "Assemblyman," as they were then called. Apparently, from what I read, he and other assemblymen accepted the notion as "partnership" with the federal government. It was built with taxpayers' money--more than twice the original estimate of \$24 billion. Before the groundbreaking ceremony, they predicted that it would only lose \$800 million a year.

ELMER

You mean it was worse than that?

BORIS

Well, like all the earlier efforts, they underestimated costs and overestimated revenues. It actually lost twice as much as that when it was new!

ELMER

No wonder we are stuck here!

BORIS

Comrade! Patience! I have it on very good authority that today we will see the Bullet Train arrive.

ELMER

Sorry. It's just that I'm sick and tired of everything decaying and decrepit.

BORIS

Steady now. How about if I loan you my new razor--just once--so that you can have a shave?

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Comment Letter I015 Continued

That'll make you feel better.

ELMER

Thanks, I'd like that. What was this fellow Frusetta like, anyhow? I assume he was from these parts?

BORIS

Yes, in fact he was a local rancher and cattleman. Ran on the strength of his independence--a big, warm and friendly man, I've read.

ELMER

(Looking furtively around and over his shoulder.) With the demise of the Soviet Union, you would've guessed that Frusetta and his fellows would have been less inclined to opt for nationalized industry?

BORIS

(Looking scared and furtively around them.) Friend! (Whispering.) Do be careful what you say--you may be overheard!

ELMER

Nobody's paying any attention--they're all asleep on their feet!

BORIS

You can never be too careful! The monitors may scan your direction at the wrong moment. Your lips may be read!

ELMER

Okay. Okay. I know. I will. It's just that I'm so damned frustrated. Nothing works. And this damned Bullet Train is the last straw.

BORIS

Patience, Comrade. Here, take this razor and go and have a close shave in the restrooms. There's no hot water, but I'm sure you're tired of that dirty beard.

ELMER

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Thanks. Yes I am. You are a dear friend! Tell me more about Comrade Frusetta's generation.

BORIS

Well, strictly off-the-record, it wasn't too long after the break-up of the Old Soviet Union, about the turn of the last century. Soviet America, or "America," as it was then called, bought into the notion that government ownership of business was a good thing. Even though other countries were denationalizing their industries, they envisioned a "partnership" of state, local and federal governments providing the citizens' basic needs.

ELMER

But I thought you said that Comrade Frusetta was independent minded?

BORIS

Well, apparently he was, but he was sold on the idea and ignored history. They always do.

ELMER

No sign of the Train--I think I'll go have that shave with your new razor--I can't wait any longer.

BORIS

Go ahead. With the post-earthquake slow-orders keeping the Train's speed down to 5-6 MPH, I'll see it long before it pulls into the Station and if I spot it I'll come and get you.

ELMER

Yes. I'll go and shave--cannot remember my last one! But when I come back, tell me more about Peter Frusetta.

BORIS

More? That's it! That's everything that history has on him so far as I can determine. But we do owe him and his fellows a lot--where would we be today without him?

c:\jp\trans\pacheco

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Comment Letter I015 Continued

ISTEA Reauthorization and the National Transportation Policy

A paper presented to the 68th Annual Meeting of the
Association for Transportation Law, Logistics & Policy
Santa Fe, New Mexico
June 25, 1997

by

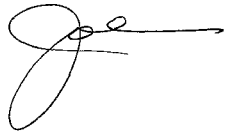
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Candidate:
American Society of Transportation & Logistics

In memory of the late
Dr. Martin T. Farris, Certified Emeritus Member, AST&L
Professor of Transportation, Arizona State University

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ISTEA Reauthorization and the National Transportation Policy

Near the end of a long and distinguished career of public service, shortly before his retirement from Congress, the Honorable Norman Y. Mineta, then Chairman of the Surface Transportation Subcommittee, said at the 1995 Annual Dinner of the International Institute for Surface Transportation Policy Studies at San Jose State University, "The crucial question in transportation today is: What should government do? And what should it leave to others?" Mr. Mineta thus framed the paramount transportation policy issue facing us as we begin a new century. The answer we give to Mr. Mineta's "**Crucial Question**" will undoubtedly affect the course that the Nation pursues well into the future. Soon, reauthorization of the Intermodal Surface Transportation Efficiency Act of 1991, Pub.L. 102-240 ("ISTEA"), either by enactment of the Administration's bill, the National Economic Crossroads Transportation Efficiency Act of 1997 ("NEXTEA"), or one of the other proposals now before the Congress, will reveal how we embark upon the new century answering the Crucial Question. This paper will explore how the answer we give to the Crucial Question with ISTEA reauthorization legislation comports with the national transportation policy.

The Past as Prologue

Mr. Justice Holmes' conclusion toward the end of the last century in *The Common Law* that, "The life of the law has not been logic; it has been experience," has new meaning in the field of transportation law and policy. What Mr. Justice Holmes called the "felt necessities of the time" may be seen in each generation's framing and answering of what they perceive to be the crucial questions of their time. Does Abraham Lincoln's analogy of "A House Divided" have renewed application today when we find ourselves half slave to publicly owned transportation and half free enterprise? Will this generation's answer to the Crucial Question propel us toward the former or return us to the latter? Indeed finding ourselves at a "crossroads," will we opt for traditional capitalism, or something else?

The National Transportation Policy

It is said that physicists are searching for the Grand Unified Theory (GUT) to explain all the laws of the universe. I believe that we in transportation ought to be seeking the Grand Unified Transportation Theory (GUTT) to heal the artificial division that exists in American transportation policy today and to return us to our free enterprise roots. Saying that we have a National Transportation Policy (NTP) is like saying we have a Rule Against Hearsay. In Title 49 there are currently five transportation policies: Rail Transportation Policy, §10101; National Transportation Policy, §13101; Air Commerce and Safety Policy, §40101; National Mass Transportation Policy, §5301; and National Intermodal Transportation System Policy, §5501. Additionally, the U.S. Dept. of Transportation (USDOT) published its National Freight Transportation Policy in the *Federal Register* on Jan. 6, 1997.¹

History of the National Transportation Policy

Professor Farris traced our NTP to the Treaty of Paris in 1763 and the passage of the Northwest Ordinance in 1787.² Free enterprise capitalism was the key to our transportation industry growth, with Adam Smith's "Invisible Hand" receiving occasional support from the taxpayers for turnpikes, canals

¹49 U.S.C. §§5301 (mass transit), 5501 (intermodal), 10101 (rail), 13101 (truck), and 40101 (air). The "findings and purposes" for promoting commercial space transportation read like policy-making. 49 U.S.C. §70101(a),(b).

²Martin T. Farris & Paul T. McElhiney, eds., *Modern Transportation Selected Readings* (Houghton Mifflin Co., 2d ed.; 1973), "National Transportation Policy: Fact or Fiction?" p. 425 (hereafter FARRIS).

Comment Letter I015 Continued

and railroads. When the excesses of human nature grew unacceptable, during the age of the Robber Barons, regulation by government was the response of generations to those "felt necessities of the time." Private ownership of industry, however, was retained, except for those natural monopolies like water, sewer and power. Uniquely, America rejected the notion that the government would own our transportation industries.³ Although the railroads were nationalized during WWI, even one of our most gifted orators, William Jennings Bryan, could not convince the American people that the "Plumb Plan" of joint federal-state ownership was preferable to privatization.⁴ Despite its many faults, the American people chose capitalism rather than switching to statism or socialism. The Transportation Act of 1940 was the first express transportation policy by Congress. However, almost each session of Congress since has added to or altered transportation policy, yielding a result that one should expect when political decision-making seeks solutions pleasing every transportation need of a diverse, growing population. Consequently, the NTP is taught to transportation students as "somewhat vague" and containing "numerous conflicting provisions."⁵ As Professors Coyle, Bardi and Novack conclude in their transportation textbook:

The federal government's policy toward transportation is a composite of these federal laws, rules, funding programs, and regulatory agencies; however, there is no unified federal transportation policy statement or goal that guides the federal government's actions.

In addition to the Congress and the president, there are more than 60 federal agencies and 30 congressional committees involved in setting transportation policy. There are two independent regulatory agencies that interpret transport law, establish operating rules, and set policy. Lastly, the Justice Department interprets statutes involving transportation and reconciles differences between the carriers and the public. Each of these groups has made decisions that have affected the development of transportation.⁶

Whether in war or peace, the NTP reflected rising concern with transportation problems in the United States and in other developed nations.⁷

³ See, generally, Harvey A. Levine, *National Transportation Policy: A Study of Studies* (Lexington: Lexington Books, 1978), especially, Ch. 1 "National Transportation Policy;" and Ch. 4 "Policy Overview," and "Nature of Transportation Subsidies," and Ch. 5, "Research/Policy Connection;" Philip D. Locklin, *Economics of Transportation* (5th ed., Homewood: Richard D. Irwin, Inc., 1960), Ch. 2 "The Transportation System of the United States;" Dudley F. Pegrum, *Transportation Economics and Public Policy* (Homewood: Richard D. Irwin, Inc., 1963), Ch. 3 "Development of Transportation in the United States;" and Ch. 16 "Transportation as a National Problem;" and Ch. 20 "Regulation and Administration in Transport Policy;" Roy J. Sampson and Martin T. Farris *Domestic Transportation: Practice, Theory and Policy* (3d ed., Boston: Houghton Mifflin, 1975); George W. Wilson *Economic Analysis of Intercity Freight Transportation* (Bloomington: Indiana U. Press, 1980); Donald F. Wood and James C. Johnson, *Contemporary Transportation* (Tulsa: PPC Books, 1980), Ch. 1 "Transportation and the Economy;" Ch. 2 "Government as a Provider of Transportation Services and Facilities;"

⁴ Robert W. Cherny, *A Righteous Cause, The Life of William Jennings Bryan* (Norman, Ok: University of Oklahoma Press, 1994), p. 159.

⁵ John J. Coyle, et al., *Transportation* (West Pub. Co., St. Paul: 4th ed. 1994), Ch. 4, "Transportation Policy," p. 104, 108 (hereafter COYLE).

⁶ COYLE, p. 104.

⁷ David Banister and Peter Hall, *Transport and Public Policy Planning* (London: Mansell Pub., Ltd., 1981); Joseph Berechman *Public Transit Economics and Deregulation Policy* (Amsterdam: Elsevier Science Pub., B.V., 1993); K.J. Button and D. Gillington, *Future*

Evolving Transportation Policy

Of the many commentators, Professor James C. Nelson has given us enlightening perspective on the NTP's evolution.⁸ Writing during the Kennedy administration, Professor Nelson said "recent studies of regulatory agencies and public policy in transportation attest eloquently to the continuing public interest in the long-standing issue of the appropriate role for government in the transportation sector of the economy." At that point in time he saw "little legislative action," but that was quickly changed as Congress tackled mass transit problems. However, Professor Nelson did raise the "Crucial Question" by saying, "[t]he question of the proper role of the government in the allocation of traffic and resources in transport" was worthy of "a general review and evaluation." He saw two roles for government in transportation, promotion and regulation.

In the United States, government shares with private enterprise the risks and costs of providing transport in a mixed system of public and private enterprise. Government usually participates by furnishing the basic ways (and some terminals) while private enterprise conducts carrier operations over public facilities. Mixed enterprise is characteristic of air, highway and water transport but not of pipeline and railway transport. As most countries operate railway under public enterprise, this country's mix of private and public enterprise is unique.

The Crucial Question presented itself time and again in the post-war era, and so many studies were made that studies of the studies appeared.⁹ Every aspect of transportation has been examined and re-examined. Reflecting its importance to the economy and society, commissions and committees have devoted forests of paper and vast resources to this endeavor. Regardless of the report or study, they all recognize the role of federal tax dollars on our transportation systems.¹⁰

Transport Policy (London: Croom Helm, Ltd., 1986); Paul W. Devore *Introduction to Transportation* (Worcester: Davis Pub. 1983); George M. Guess, ed., *Public Policy and Transit System Management* (NY: Greenwood Press, 1990) (hereafter GUESS); David W. Jones, Jr., *Urban Transit Policy: An Economic and Political History* (Englewood Cliffs, NJ: Prentice-Hall, 1985) (hereafter JONES); John B. Lansing *Transportation and Economic Policy* (New York: Free Press, 1966); Aurelio Menendez *Estimating Capital and Operating Costs in Urban Transportation Planning* (Westport, Ct.: Praeger, 1993); A.W.J. Thompson & L.C. Hunter, *The Nationalized Transport Industries* (Heinemann Educational Books, London, 1973).

⁸ James C. Nelson, "Government's Role Toward Transportation," *Transportation Journal* (Summer 1962), reprinted in Martin T. Farris & Paul T. McElhiney, eds., *Modern Transportation Selected Readings* (Houghton Mifflin Co., Boston: 2d ed. 1973), p. 416-424 (hereafter NELSON).

⁹ Harvey A. Levine, *National Transportation Policy: A Study of Studies* (Lexington: Lexington Books, 1978), Ch. 2 "Chronology of Research Studies" (hereafter LEVINE).

¹⁰ GUESS, pp. 1-2. Professor Guess concludes that "federal aid remains the dominant force in shaping activities by state and local transit agencies" but "the incentives provided are often irrational from the perspectives of efficiency and effectiveness." *Id.* See, also, David W. Jones, Jr., *Urban Transit Policy: An Economic and Political History* (Englewood Cliffs, NJ: Prentice-Hall, 1985). Professor Jones concludes that federal subsidies have "not stabilized the industry and that compound changes in transit's basic way of doing business are necessary if mass transit is to play a significant role in the future of urban transportation. . . . Subsidy for transit is necessary and appropriate, but endlessly increasing subsidy is both inappropriate and unrealistic. It is time, in short, to consider the reorganization alternative--as difficult and painful as it may be."

Comment Letter I015 Continued

Transportation Subsidies and Policy

Call it aid, grants, assistance, tax breaks, or subsidies, there is little difference from a policy perspective. However, since "subsidy" has become a dirty word, we seldom see it used. Instead, "private-public partnership" has emerged as a popular buzzword to make. How do transportation subsidies distort our transportation systems? First, however, can we agree on a definition of "subsidy"? It has been authoritatively said about subsidies:¹¹

One remarkable attribute of Government subsidies is the capacity of the very words themselves to conjure up marvelously diverse images in different minds. To most economists the subsidy is a useful fiscal instrument whose major purpose is to improve the private sector's allocation of resources among their alternative uses. To many laymen, on the other hand, subsidies are an elusive and worrisome phenomenon, frequently hidden from the general view and often suspected of being used more for private gain than for the public good. These widely divergent viewpoints appear to come mainly from differing perceptions of the efficiency with which private markets function. To the laissez-faire enthusiast there is little or no legitimate role for subsidies since, as he sees the world, free markets do the best job of organizing production to satisfy present and future consumer demands. Others, worried about the lack of strong competitive pressures for efficiency in concentrated markets and perceiving pervasive externalities, both beneficial and harmful, which are not taken into account by private business, actively support extensive Government intervention, through subsidies and other means, in the operation of private markets.

And, another highly respected economist said in the same study:¹²

Congress is not always adequately equipped to evaluate expenditure programs; the device of holding hearings is far from being a complete substitute for objective evaluation. **All too often hearings are dominated by the special interests who expect to benefit from them rather than by those who have to pay for them;** thus representatives of nonfarm sectors are rarely heard by the congressional committees on agriculture. . . . Another reason why special benefit programs need particular attention is the inertia in our political system, which tends to preserve such programs long after their initial justification (if indeed there was one) has disappeared. **These programs tend to create vested interests, whose anguished cries of ruin at the slightest suggestion of reform are usually loud enough to drown out the voice of reason.** Even if a program is widely conceded to be unsatisfactory, Congress is likely to let sleeping dogs lie by extending it unchanged rather than reforming it; the recent extension of the Sugar Act is one example. The laxity of our rules concerning political contributions may well aggravate the problem of inertia. [emphasis added]

The Taxpayers' Ideal Subsidy

These definitions of "subsidy" are as sound today as they were when those economists testified to the Joint Economic Committee of the Congress. Inducing private sector behavior with transportation subsidies has long been a feature of American politics and government. For the individual a particular subsidy may be "good" or "bad," depending on whether he pays for it or receives it. But for the Nation, a particular subsidy may diminish an "inherent advantage" of one mode of transportation to the advantage of a competing mode. We need to ask: Who actually benefits from the subsidy? The Grandfather of all transportation subsidies may have been the land grants to the railroads. In this case it was we taxpayers who enjoyed profits. Professor Nelson described the fiscal ramifications of the land

grants to the railroads, and other subsidies, in exchange for reduced freight rates (under former Section 22 of the Interstate Commerce Act) for government freight and military passengers. By June 30, 1943, the rail rate breaks for the taxpayers were estimated to be \$580 million, "a sum several times the value of the granted land at the time land grants were awarded and in excess of the sums derived by the railroads from the grants."¹³ Thus, this precedent-setting transportation subsidy proved that the taxpayers could actually profit from a Congressional deal to promote transportation, viz., infrastructure improvements. In other words, with private sector profit motives allowed to control, the promoters and the taxpayers (investors) both made huge profits. Have we learned from our history? Did subsequent Congressmen make equally advantageous agreements for later generations of taxpayers?

Subsidies Distort Transportation Industry Results

Before the railroad land grant subsidies, canals had been constructed by state agencies and operated with tolls recovering capital and operating costs. But just as highway subsidies would later affect the railroads' profitability, since about 1880, by which time the railroads had largely superseded the canals, the federal and state governments have provided improved waterways entirely free of user charges except on the St. Lawrence Seaway. Like a house of cards, tinkering with one card inevitably affects the whole transportation structure.

Even earlier, private turnpikes furnished main highways on a commercial basis; but, since 1850, highways have been provided by state and local governments, with ever-increasing federal aid (since 1916) for construction of limited federal-aid systems and with user fee support in the modern period.¹⁴ Finally, the federal government early undertook to provide the civil airways and facilities, with the synergistic benefits accruing to the airlines. As he concluded, "Over the years, tremendous sums have been spent by government in making way and terminal facilities available for use by private carriers; in giving direct subsidies to certain classes of carriers; and in engaging in expensive scientific research, and development for national security, making as a by-product much valuable technology available to the air carriers without charge to them."¹⁵

The national purposes for giving financial assistance to transport development are relevant to evaluation. Clearly, railroad grants had the unique national objective of stimulating initial settlement of undeveloped lands in the West by rapid development of a new transport technique, greatly reducing long-distance costs and increasing service speeds. Air transport aids sought improved postal communication, rapid introduction of a new technology, adequate equipment, aircraft manufacturing facilities and skilled personnel for national defense. Federal highway aid had improvement of rural postal services and stimulation of interstate commerce as its principal purposes; in addition, an underlying national defense interest has existed in a highly developed system of interstate highways adequate for the needs of commerce and the military. State highway investment largely has been in response to the way-service demands of a rapidly multiplying ownership of motor vehicles. The principal objectives for inland waterway improvement, including the no-toll policy, have been to give landlocked areas lower freight rates and to furnish additional competition for the railroads. The overall historical record indicates that perhaps the strongest motive for federal transport subsidies has been to bring about, more rapidly than otherwise would occur, the economic and social benefits of improvements in transport service and of lowered transport costs **when entirely new transport technology became available.** This was true

¹³NELSON, p. 423, fn. 3.

¹⁴Federal transportation outlays for all modes increased from \$23.961 billion in 1980 to \$39.064 billion in 1994, measured in current dollars. Bureau of Transportation Statistics, *National Transportation Statistics 1997* (Wash., D.C.: USDOT/BTS Dec. 1996), p. 98.

¹⁵NELSON, p. 418.

Comment Letter I015 Continued

of federal aids for highway and air transport development. That motive also stimulated the land grants to railroads, but with the significant difference that a century ago far greater emphasis was necessarily placed on land settlement and resource development in pioneering areas. The introduction of modern air, highway and waterway transport came long after the railroads had already opened up most of the remote and under-developed regions of this country. The grant of subsidies to those modes was intended to exploit their technologies at a faster rate than market demand could accomplish so that the economy might earlier have the new types of services and competitive transport.¹⁶

Professor Nelson also concluded that as a broad generalization, the American system of mixed enterprise in transport has worked tolerably well. He said that it has produced a fully-developed, large-scale, multiservice and essentially competitive transport system that is the envy of most countries. Of course, when he wrote the United States was not the world's largest debtor nation!

In general, he stated, the promotional policies accomplished their purposes and the government has made a truly important contribution to the American transport system. But as government promotion also has created excess facilities and inefficient transport, this by no means implies that the best and most efficient system has resulted. Nor does it mean that past policies necessarily should be continued indefinitely.¹⁷

But, looking objectively at the justification for continuing subsidies to domestic transport, it seems clear that most historical reasons for subsidies have disappeared long ago. There is, he said, no present need for land grants to stimulate initial development of railways. Also, motor transport is now a mature and thriving industry, operating over highways with high-type surfaces throughout the land. Although expanding traffic and urban congestion obviously require highway expansion, plainly there is no longer any need for public subsidies to introduce the advantages of motor transport to the American economy! He believed that most needed highway development would come as rapidly as can be economically justified in response to effective demand on the basis of appropriate user fees and tolls. The quick additions of modern highways in congested areas by state-owned toll road authorities suggest that the required facilities would come sooner on a full commercial basis than under existing so-called free-road policies.

Air transport, he said, should no longer be regarded as an infant industry in need of developmental subsidies, except for non-economic subsidization of local and metropolitan airlines to give rural and urban communities more advantages of the air age. The rapid introduction of airline technology did not cease, nor even slacken, with cessation of air-mail subsidies to the trunk lines. He predicted that placing user fees on the civil airways over a period of time would not seriously impede beneficial innovations.

The traffic growth experienced by barge lines on well-located waterways suggests that free channel and lock services are no longer essential to intensive use of inland waterways. Since the traffic on marginal waterways does not rise to efficient levels without user fees, serious questions can be asked concerning the economic justification of continued investment in such waterways.¹⁸

Professor Nelson believed that the beneficial general results of this country's policy of stimulating economic development through encouraging adequate, efficient and competitive transport with subsidies have long ago been achieved. Today, he said, the problem of transport policy is radically different than during the 1830-1930 period. He also said, "Insufficient attention has been given to this fact in formulating transport policies in recent years."

¹⁶NELSON, p. 418.

¹⁷NELSON, p. 418.

¹⁸*Id.*

The transport problem today, and in the foreseeable future, is to promote the right economic development of each of the five contending agencies, including coordinated services by two or more modes. The primary aim of policy can no longer be to foster initial economic development of the western regions, nor even to hasten the introduction of new transport industries by means of subsidies. This is not to say that transport modes now not visualized will never be invented. Rather, present-day policymakers face well-defined and critical questions growing out of the existing relations among carriers, the current promotional and regulatory policies, and the competitive structure of transport. Thus, it would seem wholly unreasonable to leave the question of what subsidies may be desirable for promoting rapid development of a new transport mode until someone invents it and operations appear to be practicable.¹⁹

The Past Government Role: Regulation

The remaining general problem of government relations to transport is how best to promote adequate and efficient transport by self-sustaining modes, all paying appropriately adjusted user fees or providing their own way.²⁰ The concept of "self-sustaining modes" of transportation has, however, come to mean two completely different things, depending on whether the carrier is in the public or private sector. In the corporate form a carrier can seek out a variety of sources of income in the marketplace, whereas the public sector carrier lacks the freedom to engage in commercial activities. So, since farebox revenues are usually a small portion of total costs of operation (and a smaller portion of overall expenses), taxpayers subsidies are thought to be the only way to keep the operation moving. However, as recent calls for freight revenue for Amtrak reveal, if the public sector carriers were returned to the private sector, and enough other revenue attracted, e.g., freight revenues, then the need for taxpayers subsidies would diminish or cease altogether.

It is when we answer the Crucial Question by saying that transportation must solve social problems (e.g., Welfare to Work; Spare the Air; Rebuilding America) that we justify continued taxpayer subsidies.²¹

Professor Nelson asked: "How, then, can the role of government in transport be adjusted to serve a more economic purpose?" And he answered the Crucial Question in this way:

Is it assumed that government's role is ideal when it encourages provision of essential transport at the least total costs, including social costs.

Over the long run, the role of government can become more economic only to the extent that promotional and regulatory policies are designed to be fully consistent with achieving maximum overall economy in transport and high standards of efficiency in each of the several modes. The national transport problem of today is not to stimulate an initial supply of efficient techniques of transport nor to encourage development of vast underdeveloped land resources, but rather it consists of facilitating the right economic development of each mode of transport, including the essential public way and terminal facilities. Consequently, in the promotional sphere government should not continue subsidy after its economically valid purposes have been accomplished. And so

¹⁹NELSON, p. 419.

²⁰*Id.* For an overall, in depth discussion of the implications of deregulation of the transportation industry, see, Paul S. Dempsey, *The Social and Economic Consequences of Deregulation: The Transportation Industry in Transition* (New York: Quorum Books, 1989).

²¹ According to an excellent study by Professor Don H. Pickrell, Harvard University, and Transportation Systems Center, U.S. Department of Transportation, Cambridge, Mass., transit subsidies are rapidly increasing to cover growing transit systems' operating losses all across the Nation. Don H. Pickrell, "Rising Deficits and the Uses of Transit Subsidies in the United States," *Journal of Transport Economics and Policy* (Sept., 1985), pp. 281-298.

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much of the nation's capital is involved in public transport investments that they should be limited by fully economic investment criteria and by universal user fees, properly adjusted to the conditions of utilization and to require all transport alternatives and resource costs involved to be considered in expanding public transport facilities.²²

After WWII a series of detailed government reports analyzed how we failed in practice to attain the goals of the NTP.²³ Professor Farris identified two types of NTP: "informal institutional policy" and "formal statutory policy."²⁴ In a detailed analysis which is equally valid today, he concluded that the NTP is incomplete and inconsistent and contains indefinable terms.²⁵ He concluded:

Undoubtedly the national transportation policy is a *fiction*. As stated in the declaration, it has many shortcomings. It is incomplete, inconsistent, and indefinable. From the point of view of containing generally acceptable ideas, the declaration of national transportation policy is a *fact*. It does contain acceptable goals and it does establish ideals to be sought. Although one may be critical of the goals and ideals, it is a fact that they are indeed present in the declaration. In a word, national transportation policy is both a fact and a fiction.²⁶

Written when the USDOT was new, Professor Farris accurately predicted that "the executive branch will assume a larger and more forceful role than in the past."²⁷ Since then, the Crucial Question has been answered time and again by increasing the federal government's role in transportation.²⁸ For

²²NELSON, p. 422.

²³The "Sawyer Report" of the U.S. Dept. of Commerce, *Issues Involved in a Unified and Coordinated Federal Program for Transportation* (Wash., D.C.: USGPO 1949); the "Weeks Report" (sometimes called the Cabinet Committee Report), Presidential Advisory Committee on Transportation Policy and Organization, *A Report to the President on Revision of Federal Transportation Policy* (Wash., D.C.: USGPO 1955); the "Mueller Report," U.S. Dept. of Commerce, *Federal Transportation Policy and Program* (March 1960); and the "Doyle Report," prepared for the U.S. Senate, Committee on Interstate and Foreign Commerce, 87th Cong., 1st Sess., by the Special Study Group on Transportation Policies in the United States, *National Transportation Policy* (Wash., D.C.: USGPO 1961).

²⁴FARRIS, p. 425.

²⁵*Id.*, p. 427-431.

²⁶*Id.*, p. 432.

²⁷*Id.*, p. 425.

²⁸Federal preemption by Congressional action (e.g., Airline Deregulation Act of 1978, Pub.L. No. 91-504, 92 Stat. 1705; Trucking Industry Regulatory Reform Act of 1994, Pub.L. No. 103-311, 108 Stat. 1683; Federal Aviation Administration Authorization Act of 1994, Pub.L. No. 103-305, 108 Stat. 1604; and the Interstate Commerce Commission Termination Act of 1995, Pub.L. No. 104-88, 109 Stat. 803); and Supreme Court construction of the Commerce Clause, the Supremacy Clause, and the Tenth Amendment, have exploded the myth of "private-public partnerships" and "state-federal partnerships" in transportation today. 49 U.S.C. §§14501, 41713; *Morales v. Trans World Airlines*, 504 U.S. 374 (1992); *American Airlines v. Wolens*, 513 U.S. 219 (1995); *Kelley v. U.S.*, 69 F.3d 1503 (10th Cir. 1995), *cert. denied*, ___ U.S. ___, 116 S.Ct. 1566, 134 L.Ed.2d 665 (1996); see, generally, Robert E. McFarland, "Section 601 Redux," 4 *The Transportation Lawyer* 23 (1995); and "The Preemption of Tort and Other Common Causes of Action Against Air, Motor, and Rail Carriers," 24 *Transportation Law Journal* 155 (1997); "Federal Preemption of State Consumer

example, the President's Executive Order No. 12893, Jan. 26, 1994,²⁹ requires the agencies to "seek private sector participation in infrastructure investment and management,"³⁰ but reliance on taxes, rather than user fees, e.g., farebox revenues (the passengers' "co-pay" in current parlance) is the choice our elected representatives make as they promise to satisfy everyone's transportation needs. Meanwhile, these criticisms of the NTP remain accurate.³¹ There are so many exceptions made to the NTP in the demands of our political process that we honor it more in the breach than the observance.³¹ We give lip service to the goal, but reveal our selfish selves by our conduct. Our elected representatives summon us to attack the "federal pot of funds." Ironically, we demand unlimited transportation services at the same time that we demand that government balance its budget. How can we have both? Are we in effect a society "trapped in a preoccupation with the public rather than the private" in seeking transportation problem solutions?³²

Intermodal Surface Transportation Efficiency Act

ISTEA "broke new ground" in how America's States and metropolitan regions approach transportation planning and investment decision-making, according to the USDOT.³³ According to President George Bush, it was a "jobs" bill, as he said at the ISTEA signing ceremony.³⁴ ISTEA's hallmarks may be found in its "Declaration of Policy," the very first paragraph of which states:

Fraud Regulations: *American Airlines, Inc. v. Wolens*, 115 S.Ct. 817 (1995), 18 *Harvard Journal of Law & Public Policy* 903 (1996).

²⁹Executive Order No. 12893, Jan. 26, 1994, "Principles of Federal Infrastructure Investments," §2(c): Private Sector Participation. "Agencies shall seek private sector participation in infrastructure investment and management. Innovative public-private initiatives can bring about greater private sector participation in the ownership, financing, construction, and operation of the infrastructure programs referred to in section 1 of this order. Consistent with the public interest, agencies should work with State and local entities to minimize legal and regulatory barriers to private sector participation in the provision of infrastructure facilities and services." No definition of "public-private initiatives" is found, or how they may differ from "private-public partnerships."

³⁰George Eads, "Economists versus Regulators," *Perspectives on Federal Transportation Policy* (Wash., D.C.: American Enterprise Institute for Public Policy Research, 1975), pp. 101-109. Professor Eads' "conviction" is that "the market, though imperfect, works better than the sort of regulation society is likely to get, barring commissions composed of omnipotent, omniscient, benevolent dictators." *Id.*, p. 108. See, also, Thomas A. Till, "National Transportation Policy: The Need for a Clear Concept," *Proceedings: Fifteenth Annual Meeting Transportation Research Forum* (Oxford, Ind.: Richard B. Cross Co., 1974), pp. 18-22; and Herman Mertins, Jr., *National Transportation Policy in Transition* (Lexington, Mass.: D.C. Heath & Co., 1972), Ch. 8 "Perspective on National Transportation Policy."

³¹Donald L. Barlett and James B. Steele, *America: What Went Wrong?* (Kansas City: Andrews & McMeel, 1992), Ch. 6 "The High Cost of Deregulation," p. 105.

³²Robin Paul Malloy, *Planning for Serfdom: Legal Economic Discourse and Downtown Development* (Philadelphia, Pa.: U. Penn. Press, 1991), p. 1 (hereafter MALLOY).

³³USDOT, Report on the U.S. Dept. of Transportation's Outreach on Reauthorization of the Intermodal Surface Transportation Efficiency Act, *How to Keep America Moving: ISTEA-Transportation for the 21st Century*, Jan. 20, 1997, p. 1.

³⁴*Traffic World*, Dec. 9, 1991, p. 4.

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It is the policy of the United States Government to develop a National Intermodal Transportation System that is economically efficient, environmentally sound, provides the foundation for the Nation to compete in the global economy, and will move people and goods in an energy efficient manner.³⁵

As Professor Farris recognized, the internal inconsistency of the NTP of trying to be economically efficient while satisfying all of the transportation expectations of every person in the Nation continues to make impossible an acceptable answer to Mr. Mineta's Crucial Question. Advocates of competing modes and needs want the available funds spent on their "felt necessities" and not those of someone else. Transportation thus becomes a means to an end, e.g., urban redevelopment, air pollution mitigation, unemployment reduction, infrastructure improvement, etc. Transferring "social costs" to transportation systems to solve myriad social problems and achieve non-transport goals distorts the reality of transportation.³⁶ Taxpayers want to know what the government is doing taking over the responsibility for unprofitable transportation systems when a free enterprise solution exists in an equitable division of freight revenues between the various modes.³⁷

"ISTEA, NEXTEA, BESTEA, HOTTEA, or Jim Jones' Koolaid"

NEXTEA seeks to "continue the successful federal role in developing a national intermodal surface transportation system through programs that ensure the safe and efficient movement of people and goods, improve economic productivity, preserve the environment, and strengthen partnerships among all levels of the government and the private sector."³⁸ Of course, if by "success" you mean increasing tax burdens to finance nationalized industry, then NEXTEA could become a "successful" successor to ISTEA. The public debate on ISTEA reauthorization curiously omits mention of the Crucial Question. The "web of alliances and interests"³⁹ clash with coalitions in what *Traffic World* describes as a "titanic struggle" over the federal Pot 'o Funds to be appropriated in the "mother of all transportation bills."⁴⁰ Each coalition accuses the other of being "self-serving," while touting their own proposal as best for the public. However, all of them urge greater government subsidies, and therefore, higher tax burdens. Underlying this struggle lies the Crucial Question and the internal inconsistencies in the NTP. The "Divided House" of transportation policy continues to worsen as ever larger taxpayer subsidies (ISTEA-type "investments") are required to fund what would otherwise be bankrupt businesses. It seems as if an "Iron Curtain" has been erected by those advocates of taxpayer funded transportation, creating an

³⁵49 U.S.C. §5501(a).

³⁶Patrick O'Sullivan, *Transport Policy: Geographic, Economic and Planning Aspects* (Totawa, NJ: Barnes & Noble Books, 1980), Ch. 4 "Transport Problems and Policies," pp. 82-107. The author calls nationalization a form of "constitutional intervention" and a "widely anathematized fate worse than death for private enterprise." It has, however, often been seen as a solution "sought eagerly by owners anxious to convert the failing yield of an ailing enterprise into the secure return of government bonds offered in compensation for their ancient property." *Id.*, p. 108.

³⁷Robert Heilbroner & Lester Thurow, *Economics Explained* (New York: Simon & Schuster rev. 1994), Ch. 8 "The Economics of the Public Sector," and "Private v. Public Debts," p. 114.

³⁸S. 468, 105th Cong., 1st Sess., March 18, 1997, p. 1. The full text is found on the Internet at <http://ftp.loc.gov/pub/thomas/c105/s468.rcs.txt>. A section-by-section analysis is also available. One coalition, the Surface Transportation Policy Project has written at Website at <http://www.istea.org>.

³⁹*Congressional Quarterly*, March 8, 1997, p. 583.

⁴⁰*Traffic World*, March 24, 1997, p. 6-7.

artificial barrier between nationalized transportation and free enterprise transportation. While a privatization revolution is occurring around the world, private sector transportation in the United States is being consumed by politically fueled notions of public ownership which history has shown are not sustainable over the long haul.⁴¹ Metropolitan Planning Organization (MPO) transportation planners say that they are prohibited from even considering private transportation options. Why argue the "Question of Money"⁴² when we should be focusing on a sustainable NTP? How can we justify our NTP if we fail to debate Mr. Mineta's Crucial Question? Mr. Justice Douglas said, "there is no free speech in the full meaning of the term unless there is freedom to challenge the very postulates on which the existing regime rests."⁴³ Some say that we cannot question public ownership of transportation, and any mention of it is "off limits." Artificial barriers to truth, insulating the "untouchables" of their adherents, precludes our ability to attain our goals, warps the notion of the "public interest" to something short of it, deflects tax dollars for private gain, and traps us behind a politicized Iron Curtain and in a "House Divided" against ourselves. Mr. Justice Douglas reminds us of John Stuart Mill's famous logic:

But the peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error.⁴⁴

Our debate on ISTEA reauthorization, and the NTP, must first answer the Crucial Question because until we decide if we want the public sector or the private sector to handle our transportation needs we are going to suffer the ills of fundamentally inconsistent policy and conflicting goals, and all the adverse financial consequences which follow from them.⁴⁵ If we fail to have a sound foundation upon which to erect our transportation systems, why should our fate not be the same as that of the Soviet Union? A debate which does not address the primary issue, which skirts the Crucial Question, is not what we should expect in America.⁴⁶

To those who say they refuse to discuss the Crucial Question, we should reply in President Jefferson's philosophy, stoutly maintained by generations of Americans over the years that "Truth is the proper and sufficient antagonist to error." On January 16, 1787, he wrote:

I am persuaded myself that the good sense of the people will always be found to be the best army. They may be led astray for a moment, but will soon correct themselves. The people are the only censors of their governors; and even their errors will tend to keep them to the true principles of the institution. To punish these errors too severely would be to suppress the only safeguard of the public liberty. The way to prevent these irregular interpositions of the people, is to give them

⁴¹John D. Donahue, *The Privatization Decision: Public Ends, Private Means* (New York: Basic Books, 1989).

⁴²*Traffic World*, May 19, 1997, p. 11.

⁴³William O. Douglas, *The Right of the People* (1958), Ch. 1, "The Philosophy of the First Amendment," p. 9 (hereafter DOUGLAS).

⁴⁴DOUGLAS, p. 14.

⁴⁵See, e.g., *Suburban Trails, Inc. v. New Jersey Transit Corp.*, 620 F.Supp. 1383 (D.N.J. 1985), and also *Westport Taxi Service, Inc. v. Adams*, 571 F.2d 697 (2d Cir. 1978), *cert. denied*, 439 U.S. 829 (1978)(cited by Paul Stephen Dempsey and William E. Thoms, *Law and Economic Regulation in Transportation* (New York: Quorum Books 1986), p. 322-327.

⁴⁶DOUGLAS, p. 9.

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full information of their affairs through the channel of the public papers, and to contrive that those papers should penetrate the whole mass of the people. The basis of our governments being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter.⁴⁷

We debate everything else in the NTP, e.g., how to raise the taxes, where the subsidies will go, what demonstration projects will each Congressman win for his district, but we won't touch Mr. Mineta's Crucial Question. NEXTEA proposes to encourage "private sector participation" in accomplishing ISTEA's goals.⁴⁸ While the world is experiencing a privatization revolution,⁴⁹ we torture ourselves about balancing the federal budget while we encumber ourselves with nationalized transportation.

"Ask Not What You Can Do For Your Country; What Can Your Country Do for You"

As a philosophy of government, ISTEA is diametrically opposite to that contained in President Kennedy's Inaugural Address, Jan. 20, 1961. Our democratic split personality, legislative hypocrisy, akin to subsidizing tobacco farmers while financing lung cancer research, appears to be a primary philosophy underlying ISTEA. We raise a double standard, saying as we deregulate transportation that only market conditions will set prices, while subsidies to public sector carriers continually increase. Each of the currently pending proposals include the unstated presumption that publicly-owned transportation industries are acceptable. These are (1) the Administration's National Economic Crossroads Transportation Efficiency Act (NEXTEA), S.468, H.R.1268; (2) the Streamlined Transportation Efficiency Program for the 21st Century (STEP 21) by Sen. John W. Warner, R-Va., and Rep. Tom DeLay, R-Tex., S.335, H.R.674; (3) the Surface Transportation Authorization and Regulatory Streamlining Act (STARS 2000), by Sen. Max Baucus, D-Mont., S.532; and (4) the ISTEA Reauthorization Act, by Sen. John H. Chafee, R-R.I., S.586. According to the Federal Highway Administration estimates, the following sums are the average yearly federal subsidies that we will spend under these four proposals, compared with ISTEA⁵⁰:

ISTEA	\$18,221,367,000
NEXTEA	\$20,063,973,000
STEP 21	\$25,516,563,000
STARS 2000	\$25,895,529,000
S.586	\$24,327,204,000

A late entry is "BESTEA," the "Building Efficient Surface Transportation and Equity Act," proposed by House Transportation Infrastructure Committee Chairman Bud Shuster (R-Pa.). Which portions, if any, of these competing bills passes and then emerges unscathed from Conference Committee remains in doubt as this is written. The simultaneous outcry is that America must invest in its infrastructure and

⁴⁷DOUGLAS, p. 11.

⁴⁸49 U.S.C. §5303; S. 468, p. 81. See, Letter from Transportation Secretary Rodney Slater to Speaker of the House Newt Gingrich, March 12, 1997, transmitting the Administration's bill to the Congress, found at the Internet site for NEXTEA (see footnote 37).

⁴⁹Wall Street Journal, Oct. 2, 1995, pp. R1-4. See, generally, José A. Gómez-Ibáñez and John R. Meyer, *Going Private: The International Experience with Transport Privatization* (Wash., D.C.: Brookings Institution, 1993), Ch. 2, "The Privatization-Regulation Cycle" (hereafter GOING PRIVATE).

⁵⁰Congressional Quarterly, May 10, 1997, p. 1067.

balance its budget. If we default to a nationalized industry platform, premised upon tax revenues to fund operations, how can we do both? If nationalized housing did not succeed, why should we expect nationalized transportation to be successful? There are, of course, many proper things that government should do for transportation.⁵¹ But, "what should it leave to others?"

Rickshaws, Lunar Escalator and Bullet Trains

Recent history has shown that planning by Big Brother, with the adhesion of the federal government, and even with the support of a totalitarian dictatorship, is not sustainable over the long run. Only Adam Smith's "Invisible Hand" has emerged as the supreme, although imperfect, platform for successful social structure.⁵² Transportation policy as a vehicle for accomplishing other social goals distorts transportation efficiency, yielding problems which the Invisible Hand would have avoided.⁵³ If transportation is used to achieve our Manifest Destiny, or to promote national security, then you will have trains through buffalo grazing lands and Defense Highways to move MX Missiles. Solving inner city decay, air pollution, unemployment, infrastructure entropy, poverty, discrimination, or tax inequities are all admirable social goals, but adding the cost of doing so to passenger and freight fares distorts the truth about transportation. There is a difference between what we can do and what we ought to do. If we gave rickshaws to the unemployed we might get some people out of their cars and reduce the welfare rolls, but would that be acceptable in a democracy? If we ignored the cost and built a lunar escalator for sightseers and vacationers, we might please builders, engineers and the tourist industry but what offset would there be in terms of increased tax burdens on small business? If the rider's "co-pay" (farebox contribution) covers only 2% of the fully amortized costs of his trip on the Bullet Train, then 98% must be coming from the rest of us. The rider may think he has transportation freedom, but it is only at the price of enslaving his society.

Political Means Transportation Policy vs. Marketplace

Professor Robin Paul Malloy has suggested a result of such policy. In defense of liberty, human dignity, and freedom, Professor Malloy has set forth a theory of law, economics, and the state which applies as well as to transportation as it does to urban development.⁵⁴ Focusing on social distortions in urban planning when citizens face wrestling with The 800 Pound Gorilla called City Hall, Professor Malloy shows us what can happen whenever public ownership prevails over private ownership of property.

Just as monopolies can be bad for consumers of gasoline or cameras, so too can they be bad for individuals when a coercive power is a person (a parent over a child for instance), a group (the mafia or a collusion of chemical companies), or the state itself. A capitalist system of private

⁵¹General Accounting Office, Report to Congressional Committees, *Surface Transportation: Research Funding, Federal Role, and Emerging Issues* (Sept. 1996), p. 3. The GAO found that the USDOT provided \$2.9 billion for surface transportation research programs from fiscal 1992 through fiscal 1996, which was about 2% of the Department's total budget for surface transportation programs. About \$2.1 billion went to FHWA, which allocated nearly half of the funds for the Intelligent Transportation Systems program's projects. The GAO has also reported to Congress on the benefits of attracting investment funds from the private sector. GAO Report to Congressional Requesters, *State Infrastructure Banks: A Mechanism to Expand Federal Transportation Financing* (Oct. 1996).

⁵²GOING PRIVATE, p. 281. The case studies "provide strong evidence of private sector cost reductions in labor-intensive services."

⁵³"Nationalizing of Railroads: A Mistake America Cannot Afford to Make," *Traffic World*, March 31, 1975, pp. 71-72 (Part I), and June 30, 1975, pp. 72-74 (Part II).

⁵⁴MALLOY, p. 39.

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ownership is, therefore, an essential element of a free society, because it is the only context in which the necessary balance between public and private can be maintained.⁵⁵

According to Professor Malloy, competing sources of power are essential for the preservation of an environment favorable to creativity, freedom, and spontaneous social order. He identifies marketplace competition as the essential element and the adverse affects upon it made by public ownership.

When the product is government, competition means protecting the individual from the tyranny of the state while providing an institutional means, via government, for protecting the individual from private coercion. But as a competitive construct this model tells us something more. It says that there will be constant conflict between the competitive roles or boundaries of the private versus the public domain. Concepts such as public/private partnerships tend to break down and destroy these boundaries. The breakdown of such boundaries is detrimental because tension can produce positive externalities. As in the commercial marketplace, however, losing the will or means to compete can leave one increasingly at the mercy of other, more powerful players.⁵⁶

He concludes that in the Nation today we have witnessed a loss of both will and means in the private sector because our values have changed or are being changed as we look to political means and the "expansion of the state" to accomplish goals like urban development.⁵⁷ We are witnessing, he concludes, "the inevitable progression toward statism."

Without a commitment to a strong private sector as a counterbalance to the public sector, the power of the state is unlikely to be adequately restrained. Thus, the impersonal and spontaneous social order of the marketplace will give way to the pervasive intrusion of state planning and increasing reliance on the political rather than the economic means for the allocation of rights and resources in our society. Such a process of setting the political means over the economic means results in the elevation of personal status over impersonal market outcomes and leads to a new age of serfdom in which *individual* rights are subservient to the group, institutional, and organizational claims of the state.⁵⁸

ISTEA Goals v. Marketplace

Accepted learning for graduate business students holds that too much expenditure on nonwealth creating activities by government may lower the capacity of a nation to create wealth out of which the former activities are financed.⁵⁹ Thus, our push toward statism and nationalized transportation undermines our ISTEA goal of enabling the United States to "compete in the global economy."⁶⁰ So, if we opt for public sector solutions, i.e., nationalization, we fall into the trap of mortgaging our children's future so that we can have "cheap" transportation now. What is likely to follow from such a

⁵⁵MALLOY, p. 32.

⁵⁶MALLOY at p. 34.

⁵⁷MALLOY, p. 35.

⁵⁸MALLOY, p. 37.

⁵⁹Dunning, *Multinational Enterprises and the Global Economy* (Addison-Wesley Pub., 1993). Professor Dunning concludes, "The fact of the globalization of business and the implications this has for the competitiveness of countries, may then force some societies to reappraise their orders of priorities of resource allocation—particularly between wealth-creating and other activities." *Id.*, at p. 529.

⁶⁰49 U.S.C. §5501(a).

policy? Professors Gómez-Ibáñez and Meyer have shown that in both developed and developing countries, a "fairly similar cycle of private and public involvement" was found to occur in stages identified as follows:

1. Entrepreneurial
2. Consolidation
3. Regulation of fares and franchises
4. Decline in profitability
5. Withdrawal of capital and services
6. Public takeover
7. Public subsidies
8. Declining efficiency
9. Dilemma of subsidy cuts, fare increases, and service cuts
10. Privatization

A House Divided Against Itself Cannot Stand

The double standard we have accepted for transportation in the United States has created a "House Divided." We tell the private sector that they must be deregulated; no more government "Nanny" to protect carriers. Let insolvency reap its grisly toll. Bankruptcy Court waits with open doors. *Laissez faire and caveat viator!* Concurrently, no subsidy is spared for the public sector carriers. Transportation "entitlements" mean that the taxpayers will give everyone a "free" ride (or nearly so). Can we exist with both? Massive numbers of bankruptcies are acceptable in the private sector, while the taxpayers offer passengers "free" transit, e.g., "Free Light Rail Shuttle." Taxpayers as "investors" in transportation "industry" accept systems that are insolvent from conception. Have we defeated the Soviet Union only to adopt their mistakes?

Where Are We Heading?

Executive Order No. 12893 directs the agencies to carefully examine all of the factors that our infrastructure investments cause in the economy and society. Section 2(a)(5) states:

(5) Analyses should consider not only quantifiable measures of benefits and costs, but also qualitative measures reflecting values that are not readily quantified.

Economists and planners urge decisions based upon concrete results of past operations, or sound predictions of future events based upon scientific analyses. Planned urban development has become the entrenched model form of government. But we need to ask what "values that are not readily quantified" by economists and planners are being ignored as we plunge ahead with statism and nationalization of transportation systems in the United States. We need to re-think our policies in terms of our capitalistic roots. A new unit of measurement designated as the equivalent of our heritage of freedom, which we may call the "Jefferson," ought to be required of our infrastructure investment decision-makers under the President's Executive Order. The significance of this precious "not readily quantified" value is seen in Abraham Lincoln's tale of his first transportation enterprise. The institution of private property is the paramount characteristic of capitalism. This vital fact is the most crucial element of our successful economic philosophy, and has had immeasurable impact on our historical survival as a democracy. Lincoln certainly thought so.

For the rest of his life, Lincoln remembered the day he earned his first dollar. It opened up for him the possibilities of heading out on his own, not just to survive but to succeed.

"You never heard, did you, how I earned my first dollar? I was about eighteen years of age. I was contemplating my new flatboat, when two men came down to the shore in carriages with trunks. 'Will you,' said one of them, 'take us and our trunks out to the steamer?' I was very glad to have the chance of earning something. I supposed that each of them would give me two or three bits. I sculled them out to the steamboat.

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Each of them took from his pocket a silver half-dollar, and threw it on the floor of my boat. I could scarcely believe my eyes as I picked up the money. You may think it was a very little thing, but it was a most important incident in my life. I could scarcely believe that I, a poor boy, had earned a dollar in less than a day--that by honest work I had earned a dollar. The world seemed wider and fairer before me. I was a more hopeful and confident being from that time."⁶¹

Conclusion

How many "flatboatmen," transportation "Horatio Algers," future free enterprise transportation leaders, and private sector transportation entrepreneurs among the living, and in future generations of Americans, will we deny ourselves by accepting statism and nationalization of our transportation industries? What value should we place upon each one of them? Yes, difficult to quantify, but can we afford to ignore it as we formulate our NTP? How would the President have answered Mr. Mineta's Crucial Question? The American people must insist that our government adhere to both the letter and to the spirit of the President's Executive Order in our NTP for the next century. Let's put the "Jefferson" into our cost-benefit analysis for infrastructure investments at all three levels of our government so that we may achieve the correct answer to the **Crucial Question**.

⁶¹Phillip B. Kundhardt, Jr., et al., *Lincoln: An Illustrated Biography* (New York: Knopf, 1992), p. 43. What did free enterprise transportation teach the President about free government? See, Honore Morrow, *Great Captain* (New York: Wm. Morrow & Co., 1927), pp. 392-94.

Response to Comments of Joseph P. Thompson, March 10, 2004 (Letter I015)

I015-01

If the HST project is to move forward in California, the Authority believes that the private sector will contribute to its financing. The Authority supports private-sector participation in the implementation and operations of HST in California to the greatest degree possible. In its June 2000 Business Plan, the Authority states, "the public's investment should be limited to that which is necessary to ensure the construction of the basic system" and "private-sector funding to construct major elements of the system would be both practicable and advisable" (Introduction Letter to Governor and Legislature). The Authority's considerable research into global experience in the development of high-speed ground transportation does not support the notion that the proposed HST could be completely privately financed and it would be unrealistic to promote such an approach in California.

Feasibility studies by both the Commission (1993-1996) and the Authority (1997-2000) showed that while HST in California could operate at a revenue surplus, most of the capital costs of the initial system would have to be publicly financed. Both the Commission and the Authority investigated the potential for freight services that would be compatible with the HST passenger services. These investigations concluded that while freight services on the HST tracks could operate at a surplus, the revenue contribution from such freight would be small in comparison to passenger services. The Authority's June 2000 Business Plan assumed an operating income from freight of about \$10 million by 2020, and more than \$16 million by 2030 (Financial Plan, PFM, November 2, 1999).

Although the Program EIR/EIS is focused on intercity passenger travel, the Authority has envisioned the HST Alternative as having the potential to carry express freight. Section 2.6.3 of the Draft Program EIR/EIS, *Potential for Freight Services*, states that "the

proposed HST system could be used to carry small packages, parcels, letters, or any other freight that would not exceed typical passenger loads. This service could be provided in either specialized freight cars on passenger trains or on dedicated lightweight freight trains. In either case, the lightweight freight vehicles would be required to have the same performance characteristics as the passenger equipment. This type of freight could be accommodated without adjustment to the passenger operational plan or modification to the passenger stations and therefore was included in the funding scenario described in the Business Plan." Section 2.6.3 of the Draft Program EIR/EIS also recognizes that a high-speed freight service might also be provided on specialized, medium-weight freight trains.

It would not be practicable for the private sector to completely finance and implement HST in California and in the United States. Every effort to date to build an HST system solely reliant on private sector financing in the United States has failed because the rate of return on investment for the private sector simply has not been enough to outweigh the billions of dollars needed to create and to implement a system. Currently, the United States has extensive highway and air transportation networks which offer relatively low-cost intercity transportation anywhere in the nation.